

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Marta Manus (SBN 260132)

mmanus@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

Attorneys for Plaintiff Emily Ferrer

[Additional Counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

EMILY FERRER, on behalf of herself and
other aggrieved employees,

Plaintiff,

v.

FITNESS INTERNATIONAL, LLC, a
California Limited Liability Company;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 37-2020-00044088-CU-OE-CTL
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Joel R. Wohlfeil
Department C-73

REPRESENTATIVE ACTION

**DECLARATION OF MICHAEL D. SINGER
IN SUPPORT OF MOTION FOR
APPROVAL OF PRIVATE ATTORNEYS
GENERAL ACT ("PAGA") SETTLEMENT**

Date: July 21, 2023

Time: 9:00 a.m.

Dept: C-73

Judge: Honorable Joel R. Wohlfeil

Reservation: 2974855

Complaint filed: December 2, 2020

Trial date: Not set

HAIG B. KAZANDJIAN LAWYERS, APC

Haig B. Kazandjian (SBN 278622)

haig@hbklawyers.com

Cathy Gonzalez (SBN 310625)

cathy@hbklawyers.com

Melissa Robinson (SBN 336951)

melissa@hbklawyers.com

801 North Brand Boulevard, Suite 970

Glendale, CA 91203

Telephone: (818) 696-2306/Facsimile: (818) 696-2307

Counsel for Plaintiff Elijah Westcott

CAPSTONE LAW APC

Raul Perez (SBN 174687)

Raul.Perez@capstonelawyers.com

Mark A. Ozzello (SBN 116595)

Mark.Ozzello@capstonelawyers.com

Joseph Hakakian (SBN 323011)

Joseph.Hakakian@capstonelawyers.com

1875 Century Park East, Suite 1000

Los Angeles, CA 90067

Telephone: (310) 556-4811/Facsimile: (310) 943-0396

Counsel for Plaintiff Manuel Banuelos Macias

1 I, Michael D. Singer, declare as follows:

2 1. I am the Managing Partner with the law firm of Cohelan Khoury & Singer,
3 counsel of record for Plaintiff Emily Ferrer. I am a member in good standing of the State Bar of
4 California. I submit this Declaration in support of the Motion for Approval of Private Attorneys
5 General Act (“PAGA”) Settlement brought by Plaintiffs Emily Ferrer, Elijah Westcott, and
6 Manuel Banuelos Macias (“Plaintiffs”). This Declaration is based on my personal knowledge
7 and if called to testify I could and would competently testify to the matters contained in this
8 Declaration.

9 2. I am a 1984 Hastings graduate, admitted to the California State Bar in 1984 and
10 the Colorado State Bar in 2001. I have been admitted to practice before the following courts:
11 U.S. Supreme Court; Second, Third, and Ninth Circuit Court of Appeals; Southern, Central,
12 Northern, and Eastern Districts of California; and all California State Courts.

13 3. In 1981, Timothy D. Cohelan and Isam C. Khoury formed Cohelan & Khoury, a
14 Partnership of Professional Law Corporations, and within a few years began to focus on class
15 actions. I joined Cohelan & Khoury in 2000 and was named partner in 2003. In 2009, Cohelan
16 & Khoury became Cohelan Khoury & Singer. Our firm represents plaintiffs in complex, class
17 and representative action litigation, including wage and hour, labor and employment, antitrust,
18 consumer protection, construction defect and other public interest type class and representative
19 actions.

20 4. I was admitted as a fellow to the College of Labor and Employment Attorneys in
21 2020, and was named to the Daily Journal 2012, 2013, and 2018 list of Top California Labor
22 and Employment Attorneys. I, along with Isam Khoury, a founding Partner of the firm, and
23 Partner Diana M. Khoury, have also been selected by our peers based on ethics, experience and
24 reputation as Super Lawyers in Civil Litigation by the Southern California Super Lawyers
25 Magazine for the years 2012 through the present.

26 5. Cohelan Khoury & Singer has been certified by the State Bar of California to
27 provide the Mandatory Continuing Legal Education activity entitled “Litigating California
28 Class Actions” and has conducted MCLE certified seminars on this topic. Senior Partner,

1 Timothy D. Cohelan, is the author of Cohelan on California Class Actions (1997-2022, updated
2 annually), part of Thomson Reuters Expert Series updated annually. I am a contributing author
3 on the CEB publication California Wage and Hour Law: Compliance and Litigation (2010-
4 2022 updated annually), in which I wrote the opening chapter overview on California Wage
5 and Hour laws and the Private Attorneys General Act (PAGA) Claim chapter. I am also a
6 contributing author to the CEB Practitioner (2020), including guidelines for oral argument and
7 forms for PAGA litigation. I have served as a columnist for the California State Bar, Litigation
8 Section on wage and hour litigation and have contributed articles on wage and hour and class
9 action issues through the years to numerous California publications.

10 6. Prior to COVID, I typically lectured several times per year for continuing
11 education courses on wage and hour and class action issues at events in San Diego, Orange
12 County, Los Angeles, and San Francisco. For over twelve years, I served as wage and hour
13 amicus co-chair and liaison for the California Employment Lawyers Association, drafting,
14 reviewing, and coordinating amicus filings on wage and hour issues in the California Supreme
15 Court and Courts of Appeal.

16 7. I have been engaged in the practice of labor and employment law since 2000,
17 handling well over 300 wage and hour class and PAGA actions and several individual labor
18 cases. I have litigated several types of employment actions, including complex ERISA
19 employee welfare benefit plan cases, as well as wage and hour class actions before Federal and
20 State Courts in California. In 2014, I tried a wage and hour class action involving claims for
21 illegally deducted wages and unreimbursed expenses in the matter of *Dilts v Penske Logistics*
22 *LLC, Inc.* and successfully appealed the trial court ruling in *Dilts* finding state laws preempted
23 by the FAAAA for truck drivers.

24 8. I have participated in over 50 appellate cases and argued writs and appeals
25 before several California District Courts of Appeal, successfully arguing the landmark *Vaquero*
26 appeal for plaintiffs in the Second District Court of Appeal, *Vaquero v. Stoneledge Furniture,*
27 *LLC* (2017) 9 Cal.App5th 98 (requiring employers separately pay commission sales employees
28 for rest periods). As co-lead counsel in *Brinker Restaurant Corp. v. Superior Court* [formerly

1 reported at (2008) 165 Cal.App.4th 25], I argued before the Fourth District Court of Appeal in
2 May 2008 on transfer from the California Supreme Court, and co-authored the briefing in the
3 successful Supreme Court appeal. I've also argued federal appeals in the Second, Third, and
4 Ninth Circuit Courts of Appeals. In addition, I have drafted numerous appellate briefs as the
5 appellant, respondent, or amicus curiae in various employment class and individual actions. My
6 firm has successfully tried multiple class cases, obtained appellate reversals of class
7 certification denials (*Hicks v. Kaufman and Broad*, (2001) 89 Cal.App.4th 908), and certified
8 multiple consumer and wage and hour class actions.

9 9. As a part of our overall firm philosophy lawyers perform community service and
10 pro bono work. Firm volunteer work includes service through the Legal Aid at Work, San
11 Diego Volunteer Lawyer Program, the San Diego County Bar Foundation, and Consumer
12 Attorneys of San Diego. I have served on the Legal Aid at Work Board of Directors since 2010.
13 Mr. Cohelan served as the Chair of the San Diego Volunteer Lawyers Program from 2015-
14 2018, and currently sits on the Board as past Chair. He completed 24 years of volunteer judicial
15 service as a Judge Pro Tem of the San Diego Superior Court. Partner Diana M. Khoury has
16 been a member of the San Diego County Bar Association, Consumer Attorneys of San Diego,
17 and Consumer Attorneys of California, serving and chairing various committees through the
18 years for these organizations. From 2010 through 2015, Ms. Khoury served on the Board of
19 Directors for Consumer Attorneys of San Diego. Since 2014, Ms. Khoury has actively served
20 on the Board of Directors for the San Diego County Bar Foundation, the 501(c)(3) charitable
21 arm of the San Diego County Bar Association providing access to justice to the underserved
22 and impoverished in the San Diego County region. Partner Jeff Geraci is a past recipient of the
23 Wiley W. Manuel Award for Pro Bon Service. Our firm's pro bono victories include a
24 settlement which prohibits the City of San Diego from targeting homeless people for illegal
25 lodging tickets under Penal Code Section 467(j). (*Spencer v. City of San Diego*, USDC Case
26 No 04CV-2314 BEN (WMC).) The *Spencer* settlement had the effect of increasing the number
27 of available shelter beds in San Diego.

28 ///

10. Cohelan Khoury & Singer has been certified Class Counsel in the following contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego County Superior Court Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court Case No. RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County Superior Court Case No. BC500675; *BANK OF AMERICA WAGE AND HOUR EMPLOYMENT PRACTICES LITIGATION*, United States District Court, District of Kansas MDL Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v. Penske Logistics, L.L.C., et al.*, United States District Court, Southern District of California Case No. 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the Second Circuit, State of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*, Orange County Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United States District Court, Southern District of California Case No. 05CV2340; *Gerard v. Les Schwab Tire Centers of California, Inc.*, Sacramento County Superior Court Case No. 2007-30000003; *Grana, et al. v. PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and PICS L.A.S.C.* Case No. BC472891; *Gutierrez v. Save Mart Supermarkets San Mateo Superior* Case No. CIV530955; *Wilcox v Albertsons*, San Diego County Superior Court Case No. GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a The Orange County Register*, Orange County Superior Court Case No. 03CC08756; *Graham, et al. v. Overland Solutions, Inc.*, United States District Court, Southern District of California Case No. 10CV0672 (FLSA Conditional Certification); *Hicks v. Kaufman and Broad Home Corp.*, Los Angeles County Superior Court Case No. B198414; *Hohnbaum, et al. v. Brinker Restaurant Corporation, et al.*, San Diego County Superior Court Case No. GIC834348; *KEMP, et al. v. CSEA, et al.*, Circuit Court of the First Circuit, State of Hawaii Case No. 98-3815-08; *LIBERTY MUTUAL OVERTIME CASES*, Los Angeles County Superior Court Case No. JCCP 4234; *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and Marketing Company*, United States District Court, Central District of California Case No.11CV07196 (FLSA Conditional Certification); *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior

1 Court Case No. 37-2014-00022411; *Schaffer v. Rady Children's Hospital-San Diego*, San
2 Diego County Superior Court Case No. 337-2015-00022978; *Schneider, et al. v. Catholic*
3 *Healthcare West*, San Francisco County Superior Court Case No. CGC-10-506243; *Salucci v.*
4 *Amada Senior Care, Inc.*, Orange County Superior Court Case No. 37-2015-00778081; *Smith*
5 *v. California Pizza Kitchen*, San Diego County Superior Court Case No. 37-2008-00083992;
6 STEROID HORMONE PRODUCT CASES, Los Angeles County Superior Court Case No.
7 JCCP 4363; *Stevenson Aibangbee v. Victoria Apartments, et al.*, Los Angeles County Superior
8 Court Case No. BC299498; *Swift v. Liebert Corp.*, Orange County Superior Court Case No.
9 00CC04588; *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange County Superior Court
10 Case No. 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et al.*, United States
11 District Court, Central District of California Case No. 12CV8590; *Vaquero v. Stoneledge*
12 *Furniture LLC*, Los Angeles County Superior Court Case No. BC522676; *Vazquez v. Kraft*
13 *Heinz Foods Company*, United States District Court, Southern District of California Case No.
14 16-CV-02749; *Watson v. Raytheon Company*, United States District Court, Southern District of
15 California Case No. 10CV0634; and *Weigle v. FedEx Ground Package System, Inc.*, United
16 States District Court, Southern District of California Case No. 06CV1330, among others, as
17 well as being appointed Class Counsel in connection with well over 250 class action
18 settlements.

19 11. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has
20 actively commenced, prosecuted and concluded numerous state and federal class and
21 representative actions. Since 2016, Cohelan Khoury & Singer has played a central role in the
22 resolution of over 250 such cases, including the following, which have received court approval:
23 (a) *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County
24 Superior Court, Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A.,*
25 *Inc.*, Los Angeles County Superior Court, Case No. BC577885, Hon. Elihu M. Berle; (c)
26 *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California,
27 Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYS*, United States
28 District Court, Central District of California, Case No. 18-cv-00415, Hon. David O. Carter; (e)

1 *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior Court, Case No. BC472891,
2 Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County
3 Superior Court, Case No. CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce*
4 *Enterprises WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu
5 M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court,
6 Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*,
7 Orange County Superior Court, Case No. 2018-01017838; (j) *Klein v. Loomis Armored US,*
8 *LLC*, San Bernardino County Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k)
9 *Laureano v. The Art of Shaving*, Los Angeles County Superior Court, Case No. BC550093,
10 Hon. Amy D. Hogue; (l) *Lopez, et al. v. Management & Training Corporation, et al.*, United
11 States District Court, Southern District of California, Case No. 17-CV-010624 JM, Hon.
12 Jeffrey T. Miller; (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court
13 Case No. 2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort*
14 *Development Corporation, et al.*, United States District Court, Southern District of California,
15 Case. No. 15-CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los
16 Angeles County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p)
17 *Morales v. The Los Angeles Country Club*, Los Angeles County Superior Court, Case No.
18 BC566493, Hon. William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company,*
19 *Inc.*, Santa Clara County Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r)
20 *Plascencia v. Aramark Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-
21 CV-288310, Hon. Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino
22 County Superior Court, Case No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon,*
23 USDC, Northern District of California, Case No. 15-CV-02005 MMC, Hon. Maxine M.
24 Chesney; (u) *Rivas v. ESA Management*, USDC, Central District of California, Case No. 14-
25 CV-5767, Hon. Dale S. Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los
26 Angeles County Superior Court, Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v.*
27 *Dignity Health*, Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan
28 G. Perkins; (x) *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior

1 Court Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's*
2 *Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; Hon.
3 Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco County Superior
4 Court, Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*,
5 San Francisco County Superior Court, Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb)
6 *Syed v. M.I. Swaco*, USDC, Eastern District of California, Case No. 12-CV-01718 DAD, Hon.
7 Dale A. Drozd; (cc) *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County
8 Superior Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods*
9 *Company*, USDC, Southern District of California Case No. 16-CV-02749, Hon. William Q.
10 Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles County Superior Court Case
11 No. BC487290, Hon. William F. Highberger; among others.

12 12. We consider ourselves experienced and qualified to evaluate the claims and
13 viability of the defenses. That experience and those qualifications allowed our firm to assist in
14 achieving an efficient resolution of the claims in this matter for the maximum non-reversionary
15 Settlement Payment of \$334,530.00. The proposed Settlement is intended to settle all claims,
16 demands, rights, liabilities, and/or causes of action for PAGA penalties in the civil action filed
17 in the Superior Court of the State of California for the County of San Diego entitled *Ferrer v.*
18 *Fitness International, LLC et al.*, San Diego County, Superior Court Case No. 27-2020-
19 00044088-CU-OE-CTL, as well as the claims asserted in *Elijah Westcott v. Fitness*
20 *International, LLC*, Los Angeles County Superior Court Case No. 20GDCV01113; and *Manuel*
21 *Banuelos Macias v. Fitness International, LLC*, Los Angeles County Superior Court Case No.
22 21STCV03796, which subject to the terms of this settlement, were consolidated into *Ferrer v.*
23 *Fitness International, LLC* by way of an amended complaint filed on April 4, 2023.

24 13. The proposed Settlement is memorialized in the proposed Private Attorneys
25 General Act Settlement and Release ("Settlement Agreement" or "SA"), attached as Exhibit 1.

26 14. Pursuant to the terms of this Settlement, Defendant will pay a maximum non-
27 reversionary Settlement Payment of \$334,530.00. Subject to Court approval, from the
28 Settlement Payment, the following shall be deducted: 1) administration expenses of \$16,250.00

1 to CPT Group, 2) PAGA Counsel's attorneys' fees up to \$131,666.67 (33.33% of the Gross
2 PAGA Amount), and litigation costs of \$21,366.76 (Settlement Agreement provided for up to
3 \$30,000). The remaining sum estimated at \$165,246.57 will be disbursed as directed by the
4 PAGA (Labor Code § 2699(i)) with \$123,934.93 (75%) paid to the Labor and Workforce
5 Development Agency ("LWDA"); and, \$41,311.64 (25%) distributed proportionately to
6 allegedly aggrieved employees based on the number of Pay Periods each worked during the
7 period from December 1, 2019 through March 15, 2020 ("Covered Period").

8 15. Plaintiffs each consented to apportionment of attorneys' fees: [25%] to Cohelan
9 Khoury & Singer, [50%] to Capstone Law APC, and [25%] to Haig B. Kazandjian Lawyers,
10 APC. Singer

11 **THE PARTIES AND AGGRIEVED EMPLOYEES**

12 16. Defendant Fitness International LLC ("LA Fitness") is a nationwide company
13 with approximately 109 fitness centers in California.

14 17. Plaintiff Emily Ferrer worked for LA Fitness at the Eastlake, California and
15 Sorrento Valley, California locations as a non-exempt front desk attendant from approximately
16 February 2019 until July 2020. Plaintiff Elijah Wescott worked for LA Fitness in Glendale,
17 California as a non-exempt sales agent from December 2019 to March 10, 2020. *Id.* Plaintiff
18 Manuel Macias worked for LA Fitness in Monterey Park, California as a janitor from June
19 2019 to March 2020.

20 18. PAGA Members are all current and former non-exempt employees of LA
21 Fitness who worked in the following positions during the Covered Period in California:
22 Babysitter, Maintenance Detail Crew, Equipment Tech, Facility Manager, Club Pride
23 Supervisor, Janitor, Facility Supervisor, Front Desk Staff, Security, and Membership Sales
24 Counselor. There are approximately 3,419 PAGA Members who worked 16,726 pay periods
25 during the Covered Period.

26 **BACKGROUND OF THE CASE AND RELEVANT PROCEDURAL HISTORY**

27 19. On September 22, 2020, Plaintiff Ferrer gave written notice to the Labor
28 Workforce and Development Agency ("LWDA") and to Defendant of her intent to pursue

1 PAGA civil penalties pursuant to Labor Code sections 2698, *et seq.* for failure to pay all wages,
2 including minimum, regular, and overtime wages; failure to provide meal and rest periods;
3 failure to provide accurate itemized wage statements; failure to provide paid sick leave; and the
4 failure to pay all wages due during and upon termination of employment. Attached as Exhibit 2
5 is a true and correct copy of Plaintiff Ferrer's Notice to the LWDA.

6 20. On October 16, 2020, Plaintiff Elijah Westcott gave written notice to the LWDA
7 and to Defendant of his intent to pursue PAGA civil penalties pursuant to Labor Code sections
8 2698, *et seq.* for failure to provide employment records, failure to provide overtime and double
9 time, failure to provide rest and meal breaks, failure to provide minimum wage, failure to
10 provide accurate employment records, failure to pay all wages on time, failure to timely pay
11 upon discharge or resignation, violation of the Wage Theft Prevention Act, failure to reimburse
12 necessary expenditures, and failure to provide notice of paid sick time and accrual. Attached as
13 Exhibit 3 is a true and correct copy of Plaintiff Westcott's Notice to the LWDA.

14 21. On November 24, 2020, Plaintiff Manuel Macias gave written notice to the
15 LWDA and to Defendant of his intent to pursue PAGA civil penalties pursuant to Labor Code
16 sections 2698, *et seq.* for failure to pay all wages, including minimum, regular, and overtime
17 wages; failure to provide meal and rest periods; failure to provide accurate itemized wage
18 statements; failure to reimburse for necessary business expenses; and the failure to pay all
19 wages due during and upon termination of employment. Attached as Exhibit 4 is a true and
20 correct copy of Plaintiff Macias' Notice to the LWDA.

21 22. At no time did the LWDA notify Plaintiffs of an intention to investigate the
22 allegations contained in the three PAGA Notices and Defendant did not serve notice it intended
23 to cure any alleged defect, pursuant to the PAGA (Labor Code § 2699.3).

24 23. On December 4, 2020, Plaintiff Ferrer filed a representative PAGA
25 representative action complaint on behalf of herself and all other aggrieved employees. On
26 December 21, 2020, Plaintiff Elijah Westcott filed a PAGA representative action complaint on
27 behalf of himself and all other aggrieved employees. On January 29, 2021, Plaintiff Manuel
28 Macias filed a PAGA representative action complaint on behalf of himself and all other

aggrieved employees. Subsequently, Plaintiffs in the three related cases agreed to consolidate their cases into *Ferrer v. Fitness International, LLC* by way of an amended complaint filed on April 4, 2023.

24. The Parties engaged in litigation, including exchanging written discovery. Subsequent to the initial exchange of formal discovery, the Parties agreed to attend mediation. In preparation for mediation, Defendant provided Plaintiffs with information and relevant documentation to assist Plaintiffs in formulating a reasonable mediation settlement demand.

25. PAGA counsel reviewed and analyzed the data and all information obtained and extrapolated civil penalties for the 3,419 PAGA Members who worked 16,726 pay periods during the Covered Period.

26. On August 2, 2021, the Parties met for mediation and engaged in good faith, arms'-length and informed negotiations facilitated by David A. Rotman, a highly experienced and well-regarded wage and hour mediator. After a full day of mediation, the Parties reached agreement on the principal terms of the proposed Settlement, and later informed the Court the Parties attended mediation and reached a settlement subject to Court approval. The Parties worked diligently thereafter to negotiate the remaining terms of the PAGA Settlement presented for approval.

SUMMARY OF PROPOSED SETTLEMENT

27. Pursuant to the terms of the PAGA Settlement, Defendant will pay \$334,530.00 from which \$165,246.57 will be disbursed pursuant to the PAGA, i.e. \$123,934.93 (75%) will be paid to the LWDA, and \$41,311.64 (25%) will be paid to PAGA Members. Labor Code § 2699(i). Accordingly, subject to Court approval, Plaintiffs propose the \$334,530.00 Settlement Payment be distributed as follows:

<u>GROSS PAGA SETTLEMENT:</u>	\$ 334,530.00
PAGA Counsel's Fees:	-\$ 131,666.67
PAGA Counsel's Litigation Costs:	-\$ 21,366.76
Administration Payment:	<u>-\$ 16,250.00</u>

<u>PAGA PENALTIES:</u>	\$ 165,246.57
Labor Workforce & Development Agency: 75%	-\$ 123,934.93
Aggrieved Employees: 25%	-\$ 41,311.64

28. Pursuant to the PAGA, 25% of PAGA penalties estimated at \$41,311.64 will be distributed proportionately to the 3,419 PAGA Members who worked during the Covered Period (December 1, 2019 through March 15, 2020) based on the number Pay Periods each worked during the Covered Period. With an aggregate 16,726 Pay Periods worked by all PAGA Members, each will receive an estimated \$2.47 per pay period.

29. The PAGA Settlement provides for a release of only claims alleged in the operative complaint. Specifically, the Released Claims means the following:

“any and all claims, demands, rights, liabilities and/or causes of action for PAGA penalties under the PAGA that were alleged or could have reasonably been alleged based on the facts alleged in the Lawsuit by Plaintiffs, on behalf of the State of California and the PAGA Members and based on the facts alleged in the operative complaints and/or first amended complaints including but not limited to: (a) PAGA civil penalties for violations of Labor Code sections 201, 202, 203, 204, 218.6, 226, 226.3, 226.7, 246, 248.5, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2810.5, and CCR 11050 claims for the attorney’s fees and costs pursuant to the PAGA incurred in the prosecution of this Lawsuit on behalf of the PAGA Members; and (c) any other remedies, penalties, or interest available under the PAGA based on the facts alleged in the complaints and/or first amended complaints. This release applies only to labor code violations allegedly suffered by PAGA Members for work performed while employed in the following positions: Babysitter, Maintenance Detail Crew, Equipment Tech, Facility Manager, Club Pride Supervisor, Janitor, Facility Supervisor, Front Desk Staff, Security, and Membership Sales Counselor. This Release in this agreement does not extend to any individual or class claims and is only applicable to the Covered Period.”

30. Within five (5) business days after the Effective Date (the first court date after both of the following have occurred: (i) final approval of this settlement is granted by the Court, and (ii) judgment approving this settlement becomes final), Defendant shall provide the Administrator, CPT Group with an Excel Spreadsheet containing the following PAGA Members’ information containing the full name of each of individual; the individual’s last known home mailing address; the individual’s social security number; and the number of pay periods that the individual worked during the Covered Period (“PAGA Members’ Information”).

31. Within ten (10) business days after Defendant provides the Administrator with

1 the PAGA Members' Information and prior to mailing, the Administrator shall run all the
2 addresses provided in the PAGA Members' Information through the United States Postal
3 Service NCOA database (which provides updated addresses for any individual who has moved
4 in the previous four years who has notified the U.S. Postal Service of a forwarding address) to
5 obtain current address information.

6 32. Any envelopes containing checks returned as non-deliverable on or before the
7 Void Date shall be re-mailed via First-Class U.S. Mail to the forwarding address affixed thereto
8 within five (5) business days of receipt by the Administrator. If no forwarding address is
9 provided, the Administrator will, within five (5) business days, promptly attempt to determine
10 the correct address using a skip trace, or other search using the name, address or Social Security
11 number of the PAGA Employee involved, and will then perform a single re-mailing. Re-
12 mailings of envelopes containing Individual Settlement Payments will not extend beyond the
13 Void Date (Individual Settlement Checks shall remain valid and negotiable for one hundred
14 eighty (180) calendar days after the date of their issuance).

15 33. In the event that the Administrator mails a check to a PAGA Member that
16 remains uncashed after one hundred twenty (180) days, such payment shall be sent to the State
17 of California, Controller's Office, Unclaimed Property Division, for further handling on behalf
18 of the PAGA Member(s).

19 **THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED**

20 34. The proposed Settlement fulfills PAGA's purpose by (1) enforcing the law, (2)
21 collecting penalties from an employer and recovering \$123,934.93 (75% of the penalties) on
22 behalf of the State of California for purposes of enforcement and education; and (3) distributing
23 \$41,311.64 (25% of the penalties) to the PAGA Members.

24 35. Plaintiffs seek penalties for violation of Labor Code sections 201, 202, 203, 204,
25 218.6, 226, 226.3, 226.7, 246, 248.5, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194,
26 1194.2, 1197, 1197.1, 1198, 2800, 2802, and 2810.5, of which 75% will be paid to the State of
27 California's Labor Workforce and Development Agency and 25% will be paid to the PAGA
28 Employees pursuant to Labor Code section 2699(i).

1 36. At mediation, PAGA penalties were calculated using the initial violation rate of
2 \$100 per pay period for each claim rather than the subsequent violation rate of \$200 because no
3 ‘notice’ had been issued by the LWDA to advise Defendant that they had previously violated
4 the law.

5 37. PAGA Counsel calculated civil penalties for each pay period in which PAGA
6 Members worked during the Covered Period for each of the following violations: (1) failure to
7 pay minimum wages (Lab. Code § 1197); (2) failure to pay overtime wages (Lab. Code § 510);
8 (3) failure to provide meal periods (Lab. Code §§ 226.7 and 512); (4) failure to provide rest
9 periods (Lab. Code § 226.7); (5) failure to provide expense reimbursement (Lab. Code § 2802);
10 (6) failure to provide split-shift premiums and abide by the IWC wage order (Lab. Code §
11 1198); (7) failure to keep accurate records, including meal period records (Lab. Code § 1174);
12 (8) failure to provide notice of sick leave and notice of terms of employment (Lab. Code § 246
13 and 2810.5); (9) failure to time pay wages during employment (Lab. Code § 204); and (10)
14 failure to timely pay wages upon separation of employment (Lab. Code § 201-203).

15 38. PAGA Members could claim a maximum reasonable penalty of \$6,339,175 after
16 considering all risks associated with litigation and potential defenses. The maximum civil
17 penalty was discounted by 50% for risks which included not proving the underlying Labor Code
18 violations.

19 39. In light of a maximum penalty of \$3,167,587.50, a settlement of \$334,530,
20 equates to approximately 10.5% of the maximum reasonable recovery, which is a fair and
21 reasonable amount of penalties warranting approval.

22 40. At mediation it was argued that liability should be zero because the rounding on
23 its face was not unfair and any time lost, in the aggregate, was *di minimus* and that off-the-clock
24 work was prohibited. Defendant argued Plaintiffs would be unable to prove that work was
25 performed during time allegedly lost to rounding and off-the-clock.

26 41. Plaintiffs estimated off-the-clock work occurred at least once for at least one-half
27 of the pay periods. Because daily shifts averaged close to 8 hours, Plaintiffs assumed all hours
28 worked should have been paid at overtime rates, thereby causing a failure to pay minimum and

1 overtime wages. This means there was a violation of the Labor Codes requiring minimum and
2 overtime wages. For 16,729 pay periods, and a 90% violation rate per pay period, Plaintiff
3 assessed civil penalties of \$83,650 for alleged Labor Code section 510 violations. The potential
4 liability for labor code violations of 510 was discounted by 90% to account for the fact that it
5 would be unlikely to recover violations for both sections 1197 and 510 based on the same
6 underlying violation. Plaintiffs assessed civil penalties of \$836,450 for alleged Labor Code
7 section 1197 violations. [Calculated as follows: $16,729 * 50\% = 8,364.5$ Pay Periods (x) \$100
8 for the initial violation rate for each pay period = \$836,450.]

9 42. With respect to Labor Code section 512 meal period violations, Plaintiffs
10 assumed a 50% violation rate and at least one meal period per pay period, and a \$50 per pay
11 period penalty (pursuant to Labor Code § 558), for which Plaintiffs estimated Defendant's
12 exposure of \$418,225 ($8,364.5$ Pay Periods * \$50 per Pay Period).

13 43. Because Labor Code section 226.7 rest periods are not subject to the same clock-
14 in and clock-out requirements as meal periods, violation rates and proof of a non-compliant or
15 waived rest break would require reliance on potentially competing testimony and declarations
16 from Aggrieved Employees. Accordingly, Plaintiffs assumed 25% of the 16,729 Pay Periods
17 had a least one violation resulting in a maximum civil penalty of \$418,225 ($4,182$ Pay Periods *
18 \$100 Per Pay Period).

19 44. Plaintiffs sought recovery of civil penalties for Defendant's failure to reimburse
20 business expenses as required by Labor Code section 2802 for use of their personal cell phone
21 and use of their personal vehicles, wherein they incurred mileage expenses. Assuming a 100%
22 violation rate in each of the 16,729 pay periods during the PAGA Period, the maximum
23 exposure was estimated at \$1,672,900 ($16,729$ Pay Periods * \$100). Plaintiffs then applied a
24 50% discount to account for the potential argument that a violation of § 2802 could not be
25 applied for each and every affected pay period, as well as the argument that proof of this claim
26 would be impossible due to the lack of phone records. Therefore, the maximum exposure for
27 this claim is \$836,450.

28 45. Plaintiff sought recovery of civil penalties for Defendant's failure to provide

1 notice of sick leave in violation of Labor Code section 246, and failure to provide notice of the
2 terms of employment in violation of Labor Code section 2810.5. Assuming a 100% violation
3 rate in each of the 16,729 pay periods during the Covered Period, the maximum exposure for
4 failure to provide notice of sick leave in violation of Labor Code section 246 was estimated at
5 \$1,672,900 (16,729 Pay Periods * \$100 for initial violation). Arguably, notice of the terms of
6 employment would only have to be provided once to each aggrieved employee. Therefore, the
7 maximum exposure for failure to provide notice of the terms of employment in violation of
8 Labor Code section 2810.5 was estimated at \$314,900 (3,149 EEs * \$100 for initial violation).

9 46. Plaintiffs also alleged derivative violations of Labor Code § 226 relating to the
10 failure to pay all wages due, and meal period and rest period claims.

11 47. Pursuant to Labor Code section 226, accurate and itemized wage statements must
12 be provided to all employees. If Plaintiffs were to prevail on their underlying claims, Plaintiffs
13 would be entitled to recover civil penalties pursuant to Labor Code section 226. For this
14 derivative claim, Plaintiffs assumed since 50% of the pay periods unpaid wages and non-
15 compliant meal and rest periods, 50% of the wage statements would necessarily be inaccurate.
16 Defendant's realistic exposure for civil penalties was estimated at \$836,450 (8,364.5 Pay
17 Periods * 50% violation rate * \$100 Per Pay Period).

18 48. The potential exposure for violation of Labor Code sections 201-203 would be
19 dependent upon proving wages were owed on the underlying claims at the time of separation
20 and not paid.

21 49. The number of former aggrieved employees was not provided. Therefore, civil
22 penalties were estimated for 25% of the aggrieved employees and estimated at \$85,475 (3,419 *
23 .25 x \$100).

24 50. The potential exposure for violation of Labor Code section 204 would be
25 dependent upon proving wages were owed on the underlying claims during employment and not
26 paid. Again, this claim is dependent on proving the underlying claims for failure to pay wall
27 wages. As such, the potential exposure was reduced by 50%. Civil penalties were estimated at
28 \$836,450 (8,364.5 Pay Periods * \$100 for initial violation).

52. In light of the risks, Defendant's exposure for PAGA penalties was reduced by approximately 50% resulting in a maximum exposure of \$3,167,587.50 (\$6,339,175 x 50%). [Calculated as follows: \$83,650 (Lab. Code § 510) + \$836,450 (Lab. Code § 1197) + \$418,225 (Lab. Code § 512) + \$418,225 (Lab. Code § 226.7) + \$836,450 (Lab. Code § 2802) + \$1,672,900 (Lab. Code § 246) + \$314,900 (Lab. Code § 2810.5) + \$836,450 (Lab. Code § 226) + \$836,450 (Lab. Code § 204) + \$85,475 (Lab. Code § 203) = \$6,339,175 * 50% = \$3,169,587.50.]

53. PAGA Counsel requests \$131,666.67 for their attorneys' fees, (33.33% of the Gross PAGA Payment), and \$21,366.76 in litigation costs. As of the date of the filing of this Motion, PAGA Counsel have worked 322.8 hours prosecuting this action, resulting in a lodestar of \$208,620.00 in attorneys' fees, and have incurred \$21,366.76 in litigation costs. Attached as Exhibit 5 is a true and correct copy of PAGA Counsel's Consolidated Summary of Time and Costs; Exhibit 6 is a true and correct copy of Cohelan Khoury & Singer's Itemization of Costs.

54. PAGA Counsel's request for 33.33% of the common fund created falls in the lower-range of fee percentage awards which commonly range from 20% to 40% of a common fund. The requested sum constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation, strictly on a contingent basis, and for the results achieved for the State, and the Aggrieved Employees, as well as Defendant's current and future employees. Numerous state and federal courts in California routinely approve fee requests equal to or more than the amount sought here.

55. PAGA Counsel's fee request is in line with awards in similar cases in California and nationwide and demonstrates PAGA Counsel's fee request is consistent with market rates

1 and is reasonable.

2 56. Unlike counsel for Defendant, who were regularly paid a fair-market hourly
3 rate, PAGA Counsel received no compensation for their services for nearly one and one-half
4 years and received no reimbursement of the expenses required to prosecute the case. The
5 contingent nature of the representation, and the risks of this litigation, fully warrant judicial
6 approval of the fee request.

7 57. Since 2018, Cohelan Khoury & Singer has been awarded one-third of a common
8 fund, in many class and representative action settlements, including:

9 a) *McGrath v. Wyndham*, USDC Southern District of California, Case No. 15-CV-
10 1631 JM (Hon. Jeffrey T. Miller fees of 33-1/3% of \$7,250,000 in pre-certification wage and
hour class action).

11 b) *Arellano v. Container Connection*, Los Angeles County Superior Court, Case
12 No. BC500675 (Hon. Ann I. Jones – approving attorneys’ fees of 33-1/3% of \$1,625,000 in a
certified wage and hour class action).

13 c) *Nijmeh v. Bon Appetit*, Santa Clara County Superior Court, Case No.
14 16CV294127 (Hon. Thomas E. Kuhnle – approving attorneys’ fees of 33-1/3% of \$1,350,000
in a pre-certification wage and hour class action).

15 d) *Vaquero v. Stoneledge*, Los Angeles County Superior Court, Case No.
16 BC522676 (Hon. Elihu M. Berle –attorneys’ fees of 33-1/3% of \$3,900,000 in certified wage
and hour class action).

17 e) *Gutierrez v. Save Mart Supermarkets*, San Mateo County Superior Court, Case
18 No CIV530955 (Hon. Marie S. Weiner – approving attorneys’ fees of 33-1/3% of \$5,000,000
in a certified wage and hour class action);

19 f) *Hernandez v. Workforce Enterprises WFE, Inc.*, Los Angeles County Superior
20 Court, Case No. BC590913 (Hon. Elihu M. Berle – approving attorneys’ fees of 33-1/3% of
\$778,000 in a pre-certification wage and hour class action).

21 g) *Ramos v. Home Depot U.S.A., Inc.*, Alameda County Superior Court,
22 Case No. RG15797737 (Hon. Ioana Petrou – approving attorneys’ fees of 33-1/3% of
\$2,600,000 in a PAGA action).

23 h) *Klein v. Loomis*, San Bernardino Superior Court, Case No. CIVDS1704547
24 (Hon. David Cohn –attorneys’ fees of 33-1/3% of \$1,014,000, pre-certification wage and hour
class action).

25 i) *Gutierrez v. Southern Counties Oil*, San Diego County Superior Court, Case No.
26 2017-00040850 (Hon. Ronald F. Frazier – approving attorneys’ fees of 33-1/3% of \$1,912,500
in a pre-certification wage and hour class action).

27 j) *Lawson v. Staples*, Los Angeles County Superior Court, Case No. BC542237
28 (Hon. Kenneth R. Freeman – approving attorneys’ fees of 33-1/3% of \$175,000 in a pre-
certification wage and hour class action).

1 k) *Hanson v. Leisure Sports, Inc.*, Contra Costa County Superior Court, Case No.
2 MSC17-00078 (Hon. Edward G. Weil – approving attorneys’ fees of 33-1/3% of \$600,000 in a
pre-certification wage and hour class action).

3 l) *Horton v. Neostrata Company Inc., et al.*, USDC Southern District of California,
4 Case No. 16-CV-2189 JLB (Hon. Anthony J. Battaglia – approving attorneys’ fees of 33-1/3%
of \$355,000 in a pre-certification wage and hour class action).

5 m) *Schaffer v. Rady Children’s Hosptial – San Diego, et al.*, San Diego County
6 Superior Court, Case No. 2015-00022978 (Hon. Joel R. Wohlfeil – approving attorneys’ fees
of 33-1/3% of \$12,500,000 in a certified wage and hour class action).

7 n) *Hubbard v. Caliber Home Loans, Inc.*, Orange County Superior Court, Case No.
8 2018-01017838 (Hon. Glenda Sanders – approving attorneys’ fees of 33-1/3% of \$175,000
settlement in a PAGA action).

9 o) *Redin v. Accountabilities Professional Group, Et al.*, Orange County Superior
10 Court, Case No. 2017-00929734 (Hon. Glenda Sanders –attorneys’ fees of 33-1/3% of
\$255,000 settlement in Class action).

11 p) *White v. Sacramento Regional Transit District*, Sacramento County Superior
12 Court, Case No. 234-2018-00240461 (Hon. David D. Alba –attorneys’ fees of 33-1/3% of
\$385,000 settlement in Class action).

13 q) *Burris v. Resort Vacations, Inc.*, Orange County Superior Court, Case No. 30-
14 2018-00997260 (Hon. Randall J. Sherman –attorneys’ fees of 33-1/3% of \$1,485,000
settlement in Class action).

15 r) *Jimenez v. Reyes Holdings, LLC, et al.*, San Diego County Superior Court, Case
16 No. 37-2019-00051577 (Hon. Joel R. Wohfeil –attorneys’ fees of 33-1/3% of \$650,000
settlement in Class and Representative action).

17 s) *Santos, et al. v. National General Management Corp.*, San Bernardino County
18 Superior Court, Case No. CIVDS 1918865 (Hon. David Cohn –attorneys’ fees of 33-1/3% of
\$680,000 settlement in PAGA action).

19 t) *Loreto v. General Dynamics Information Technology, Inc.*, USDC Southern
20 District of California, Case No. 3:19-cv-01366-GPC-MSB (Hon. Gonzalo P. Curiel –attorneys’
fees of 33-1/3% of \$900,000 settlement in a pre-certification wage and hour class action).

21 u) *Romanov v. Amazon Services LLC.*, USDC Central District of California, Case
22 No. 2:20-cv-02692-SB-KS (Hon. Stanley Blumenfeld, Jr. – approving attorneys’ fees of 33-
1/3% of \$700,000 settlement in a pre-certification wage and hour class action).

23 v) *Olson v. Wrike, Inc.*, Santa Clara County Superior Court, Case No.
24 20CV366599 (Hon. Patricia M. Lucas – approving attorneys’ fees of 33-1/3% of \$2,000,000
settlement in a pre-certification wage and hour class action).

25 w) *Gutierrez v. Kite Electric Incorporated*, Orange County Superior Court, Case
26 No. 30-2020-01133960 (Hon. Peter J. Wilson – approving attorneys’ fees of 33-1/3% of
\$458,991 settlement in a pre-certification wage and hour class action).

27 x) *Ramos Gonzalez v. Staff Pro, LLC, et al.*, San Diego County Superior Court,
28 Case No. 37-2019-00044561 (Hon. Joel R. Wohlfeil –attorneys’ fees of 33-1/3% of \$1,500,000
settlement in Class and Representative action).

y) *Gutierrez v. Kite Electric Incorporated*, Orange County Superior Court, Case No. 30-2020-01133960 (Hon. Peter J. Wilson – approving attorneys’ fees of 33-1/3% of \$458,991 settlement in a pre-certification wage and hour class action).

z) *Dolan v. Abacus Data Systems, Inc.*, San Diego County Superior Court, Case No. 37-2019-00051447 (Hon. Katherine Bacal –attorneys’ fees of 33-1/3% of \$600,000 settlement in Class and Representative action).

aa) *Lopez, et al. v. Pacific Gas and Electric Company.*, San Francisco County Superior Court, Case No. CGC-17-562970 (Hon. Richard B. Ulmer, Jr. –attorneys’ fees of 33-1/3% of \$350,000 settlement in Class and Representative action).

bb) *Popal v. Wells Fargo Bank, National Associate*, San Diego County Superior Court, Case No. 37-2020-00038101 (Hon. Gregory W. Pollack –attorneys’ fees of 33-1/3% of \$3,000,000 settlement in Class and Representative action).

cc) *De Benning v. Costco Wholesale Corporation*, Sacramento County Superior Court, Case No. 34-2021-00309030 (Hon. Gregory W. Pollack –attorneys’ fees of 33-1/3% of \$9,000,000 settlement in Class and Representative action).

58. PAGA Counsel’s skill and experience support their hourly rates and are in line with rates typically approved in wage and hour class action litigation in California and have been specifically approved by numerous state and federal courts in California. Cohelan Khoury & Singer’s practice is limited exclusively to litigating employment class actions on behalf of employees and consumers. Cohelan Khoury & Singer have been appointed Class Counsel or co-Class Counsel in over 300 such cases. As leading attorneys in the field, Plaintiffs’ counsel continually monitors prevailing market rates of defense and plaintiff law firms and set the billing rates to follow attorneys and staff of comparable skill, qualifications and experience. Other wage and hour attorneys working as Class Counsel before California courts charge comparable if not higher rates.

59. Cohelan Khoury & Singer’s skill and experience support their hourly rates: Founding Partner, Isam C. Khoury - \$925; Managing Partner, Michael D. Singer - \$900; Associates, Marta Manus - \$700, Kristina De La Rosa (former) - \$500. These rates are in line with those typically approved in California wage-and hour class action litigation. Indeed, the Laffey Matrix would actually provide for a rate increase. Attached as Exhibit 7 is a true and correct copy of the Laffey Matrix (accessed May 15, 2023, available at [matrix \(laffeymatrix.com\)](https://laffeymatrix.com)).

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on May 16, 2023, in San Diego, California

Michael D. Singer

EXHIBIT 1

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE

This Private Attorneys General Act (“PAGA”) Settlement and Release is entered into by and between the named Plaintiffs Emily Ferrer, Elijah Westcott, and Manual Banuelos Westcott (“Plaintiffs”) on behalf of the State of California and all PAGA Members, as that term is defined below, on the one hand, and Defendant Fitness International, LLC (“Defendant”), on the other hand. Plaintiffs and Defendant are collectively referred to herein as the “Parties.”

This Settlement shall be binding on Plaintiffs, Defendant and Released Parties (defined below), subject to the terms and conditions hereof and, upon approval of the Court and the state of California.

I. NATURE OF LAWSUIT

1. Plaintiffs each commenced a Lawsuit asserting multiple causes of action under the PAGA, on behalf of themselves in the capacity of a PAGA representative, the State of California, the California Labor & Workforce Development Agency (“LWDA”) and all other aggrieved employees of Defendant.

2. The first filed case, *Emily Ferrer v. Fitness International, LLC*, San Diego County Superior Court Case No. 37-2020-00044088-CU-OE-CTL, was filed on December 2, 2020 by Cohelan Khoury & Singer (“CKS”).

3. *Elijah Westcott v. Fitness International, LLC*, Los Angeles County Superior Court Case No. 20GDCV01113, was filed on December 21, 2020 by Haig B. Kazandjian Lawyers, APC (“Kazandjian”).

4. *Banuelos Macias v. Fitness International, LLC*, Los Angeles County Superior Court Case No. 21STCV03796 was filed on January 21, 2021 by Capstone Law APC (“Capstone”).

5. The Parties wish to avoid the expense of further proceedings and any future prosecution of Plaintiffs' PAGA claims, as alleged in the Lawsuit (defined below).

II. DEFINITIONS

6. "Administrator" shall mean CPT Group, Inc. or other mutually agreeable third-party settlement administrator that the Parties will ask the Court to appoint for the purposes of administering this Settlement.

7. "Court" refers to the San Diego County Superior Court, the Honorable Joel Wohlfeil presiding.

8. "Covered Period" shall mean the pay periods from December 1, 2019 through March 15, 2020.

9. "Defense Counsel" shall mean Counsel for Defendant, Julie R. Trotter and Jeffrey M. David of Call & Jensen, APC.

10. "Effective Date" shall mean the first court date after both of the following have occurred: (i) final approval of this settlement is granted by the Court, and (ii) judgment approving this settlement becomes Final.

11. "Final" shall mean the latest of: (i) if there is an appeal of the Court's judgment, the date the judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review in the California Supreme Court; or (ii) if a petition for review is filed, the date of denial of the petition for review, or the date the judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal from the judgment.

12. "Gross PAGA Amount" means Three Hundred, Thirty-Four Thousand, Five Hundred Thirty Dollars (\$334,530), which is the maximum amount Defendant can be required to

pay under this Settlement, which includes: (1) Individual Settlement Payments (as defined here); (2) Attorneys' Fees; (3) Attorney's Costs; (4) Administrator Costs; and (5) the payment to the LWDA of its share of the PAGA Fund.

13. "Individual Settlement Payments" shall mean the individual portion of the PAGA Member Fund which shall be paid to all PAGA Members pro rata based upon the proportional number of pay periods worked by each PAGA Member during the Covered Period.

14. "Lawsuit" refers to the civil actions filed in the Superior Court of the State of California for the County of San Diego entitled *Ferrer v. Fitness International, LLC* et al., San Diego County, Superior Court Case No. 27-2020-00044088-CU-OE-CTL and the claims asserted in *Elijah Westcott v. Fitness International, LLC*, Los Angeles County Superior Court Case No. 20GDCV01113; and *Manuel Banuelos Macias v. Fitness International, LLC*, Los Angeles County Superior Court Case No. 21STCV03796, which subject to the terms of this settlement, will be consolidated into *Ferrer v. Fitness International, LLC* by way of an amended complaint.

15. "Notice" is an explanatory letter attached as Exhibit A and agreed upon by Plaintiffs' and Defendant's counsel, which, after Court-approval, will provide a brief description of the resolution of this Lawsuit and the reasons the funds are being distributed.

16. "PAGA Counsel" shall refer to Michael D. Singer and Marta Manus of Cohelan Khoury & Singer, Haig B. Kazandjian of Haig B. Kazandjian Lawyers, APC, and Brandon K. Brouillette of Capstone Law APC.

17. "PAGA Fund" shall mean the Gross PAGA Amount *minus* the Court-approved sum of: (1) Attorney's Fees; (2) Attorney's Costs and (3) the Administrator Costs. Pursuant to the Labor Code § 2699(i), the PAGA Fund shall be allocated and paid as follows: 75% to the

LWDA; and 25% to the PAGA Members, which shall be referred to as the “PAGA Member Fund.”

18. “PAGA Members” shall mean all current and former non-exempt employees of Fitness International, LLC who worked in the following positions during the Covered Period in California: Babysitter, Maintenance Detail Crew, Equipment Tech, Facility Manager, Club Pride Supervisor, Janitor, Facility Supervisor, Front Desk Staff, Security, and Membership Sales Counselor.

19. “PAGA Member Fund” shall mean the amount remaining in the Gross PAGA Amount *minus* the Court-approved sum of: (1) Attorney’s Fees; (2) Attorney’s Costs; (3) the Administrator Costs and (4) the 75% of the PAGA Fund to be paid to the LWDA pursuant to the PAGA.

20. “PAGA Members’ Information” shall mean the Excel Spreadsheet containing the following PAGA Members’ information containing the full name of each of individual; the individual’s last known home mailing address; the individual’s social security number; and the number of pay periods that the individual worked during the Covered Period.

21. “Released Claims” means any and all claims, demands, rights, liabilities and/or causes of action for PAGA penalties under the PAGA that were alleged or could have reasonably been alleged based on the facts alleged in the Lawsuit by Plaintiffs, on behalf of the State of California and the PAGA Members and based on the facts alleged in the operative complaints and/or first amended complaints including but not limited to: (a) PAGA civil penalties for violations of Labor Code sections 201, 202, 203, 204, 218.6, 226, 226.3, 226.7, 246, 248.5, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2810.5, and CCR 11050 claims for the attorney’s fees and costs pursuant to the PAGA incurred

in the prosecution of this Lawsuit on behalf of the PAGA Members; and (c) any other remedies, penalties, or interest available under the PAGA based on the facts alleged in the complaints and/or first amended complaints. This release applies only to labor code violations allegedly suffered by PAGA Members for work performed while employed in the following positions: Babysitter, Maintenance Detail Crew, Equipment Tech, Facility Manager, Club Pride Supervisor, Janitor, Facility Supervisor, Front Desk Staff, Security, and Membership Sales Counselor. This Release in this agreement does not extend to any individual or class claims and is only applicable to the Covered Period.

22. “Released Parties” means Defendant, their respective present and former officers, directors, owners, employees, shareholders, agents, trustees, representatives, attorneys, insurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, and assigns, including but not limited to, any individual or entity that could be jointly liable with or vicariously liable for Defendant or any of them.

23. “Settlement” or “Agreement” shall mean this Settlement and Release.

III. REPRESENTATIONS

24. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit, including but not limited to the Released Claims. Defendant contends, among other things, that it has complied at all times with the California Labor Code, the related California Industrial Welfare Commission Wage Orders, and all other state and federal wage and hour laws, and further contends that all of its respective employees were and are paid properly and the Lawsuit is without merit. Defendant has denied and continues to deny each and every material factual allegation and alleged claim asserted against it in the Lawsuit.

25. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence or wrongdoing on the part of Defendant. Nothing herein shall constitute an admission by Defendant that the Lawsuit was properly brought. Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in the operative Complaint in the Lawsuit; and (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal.

26. The Parties recognize that, absent this Settlement, the issues presented in the Lawsuit are likely to be resolved only with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

27. Plaintiffs and PAGA Counsel have diligently pursued an investigation of the claims against Defendant.

28. Based on their own independent investigations and evaluations, Defendant, Defense Counsel, Plaintiffs and PAGA Counsel are of the opinion that the resolution for the consideration and on the terms set forth in this Settlement is fair, reasonable and adequate and is in the best interests of all Parties.

29. The purpose of this Settlement is to settle and compromise all Released Claims by Plaintiffs that Plaintiffs, on behalf of themselves, the State of California, the California LWDA and all other PAGA Members during the Covered Period, have against Defendant and the Released Parties.

IV. TERMS OF SETTLEMENT

30. In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiffs and Defendant agree to settle and compromise the Released Claims, subject to the terms and conditions set forth in this Settlement.

31. Amount of Settlement. As consideration for the settlement described herein and the release contained in this Settlement, the Parties have agreed that the Gross PAGA amount of a total of Three Hundred Thirty-Four Thousand, Five Hundred, Thirty Dollars and Zero Cents (\$334,530.00) shall be paid by Defendant to resolve the Lawsuit, including the payment of civil penalties pursuant to PAGA.

32. PAGA Counsel's Fees and Costs. Pursuant to Labor Code section 2699(g)(1), the Parties agree that PAGA Counsel is entitled to seek an award of attorneys' fees not to exceed One Hundred Thirty-One Thousand, Six Hundred, Sixty-Six Dollars and Sixty-Seven Cents (\$131,666.67 – i.e., 33.33% of the Gross PAGA Amount) and costs not to exceed Thirty Thousand Dollars (\$30,000.00) subject to approval by the Court, which will be paid from the Gross PAGA Amount. In the event the Court approves payments of less than these amounts, the difference will be added to the PAGA Fund (although Plaintiffs may appeal an order granting less than the full amount sought for attorneys' fees and costs). If the Court believes the award of fees and costs should be reduced, the other terms of the Settlement will remain in effect and any

such reduction will not affect the remaining terms, other than adjusting the PAGA Fund. The Administrator shall report these payments on IRS Form 1099 issued to PAGA Counsel.

33. Administrator Costs. The Parties agree to utilize CPT Group, Inc. for settlement administration purposes the costs of which shall not exceed \$20,000.00 subject to approval by the Court, which will be paid from the Gross PAGA Amount. In the event the Court approves a payment of less than this amount, the difference will be added to the PAGA Fund.

V. DUTIES OF THE PARTIES PRIOR TO APPROVAL

34. Amended Complaint. Within ten (10) days after the Parties have signed this Agreement, Plaintiffs will begin steps necessary to file an Amended Complaint that will add the PAGA claims alleged in *Macias* and *Westcott* to the *Ferrer* Action. Defendant will stipulate to the filing of the Amended Complaint. This Agreement will not be submitted to the Court for approval until the Amended Complaint has been filed. Within ten (10) days of the filing of the First Amended Complaint, Plaintiffs Macias and Westcott will dismiss their other pending actions without prejudice.

35. Plaintiffs' Motion. Promptly upon execution of this Settlement, Plaintiffs shall file a noticed motion to approve the Settlement. PAGA Counsel will be responsible for drafting all documents necessary to obtain approval of the PAGA Settlement, subject to reasonable approval by Defendant. Plaintiffs shall provide a draft of the settlement motion to Defense Counsel at least five (5) calendar days prior to filing, for purposes of receiving any feedback or comments. Provided that the noticed motion is consistent with the terms of this Agreement, the motion will be unopposed and Plaintiffs shall state that in his motion.

36. Judgment. As part of the motion to approve the Settlement, Plaintiffs shall submit a proposed order and judgment in substantially similar format as Exhibit B, which approves the

Settlement as fair, reasonable, and adequate, and directs the Parties to effectuate the Settlement according to the terms of the Settlement. This Settlement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the Released Claims as to Plaintiffs and PAGA Members.

37. The Parties agree that there is no statutory right for any PAGA Members to object, opt out or otherwise exclude themselves from the Settlement. Neither Plaintiffs nor Defendant, nor their respective counsel, will directly or indirectly solicit or otherwise encourage any PAGA Member to object to the Settlement or appeal from the judgment. The Parties further agree there is no right for any PAGA Employee to appeal the approval of the Settlement by the Court. The Parties will jointly defend against any objection, opt-out or any appeal filed with respect to the order approving this Settlement.

VI. COURT APPROVAL

38. Court Approval Required. The Parties recognize that, in accordance with Labor Code section 2699(l), Court approval is required for settlement of a PAGA action. The Agreement is contingent upon the approval by the Court of this Settlement. In the event that the Court does not approve the PAGA settlement in the Ferrer Action and would require any action that is inconsistent with any material term in this Agreement or in the PAGA settlement, the Parties agree to cooperate in good faith to determine whether this Agreement may be so amended. If the Court does not approve the Settlement or if the Court does not enter judgment, as provided for in this Settlement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, or if the LWDA or any other state or government agency seeks to

intervene in the action and/or commences an enforcement action, then any of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement.

39. Notice to the State. At the same time that PAGA Counsel file and serve Plaintiffs' motion to approve the settlement, PAGA Counsel also shall submit it to the LWDA in accordance with Labor Code section 2699(1)(2). PAGA Counsel shall submit to the LWDA a copy of the judgment in the Lawsuit and a copy of any other order providing for or denying an award of civil penalties within ten (10) days after receipt of such judgment or order, in compliance with Labor Code section 2699(1)(3).

40. This Settlement and any and all releases contained herein shall be void if the Court declines to provide the approval requested.

VII. ADMINISTRATION OF SETTLEMENT

41. The Administrator's duties and responsibilities pursuant to the Settlement will include, but not be limited to the following: updating PAGA Employee mailing addresses through a National Change of Address database search, and skip tracing envelopes containing PAGA Members' Individual Settlement Payments returned as undeliverable; establishing the Settlement Fund Account; calculating Individual Settlement Payments; preparing, printing, and mailing the Individual Settlement Checks and accompanying Notice to PAGA Members disbursing payment of Attorney's Fees and Attorney's Costs to Plaintiffs' Counsel; disbursing payment to the LWDA consisting of seventy-five percent (75%) of the PAGA Fund; printing and providing PAGA Members, Plaintiffs, and Plaintiffs' Counsel with IRS Forms 1099 as required

under this Settlement Agreement and applicable law; providing a due diligence declaration for submission to the Court upon completion of the terms of the Settlement; and for such other tasks as the Parties mutually agree or the Court orders. The Administrator shall keep the Parties timely apprised of the performance of all Administrator responsibilities, and shall not mail any payments to Plaintiffs, the LWDA, Plaintiffs' counsel or any PAGA Employee until the amounts are approved by the Parties. Any legally mandated tax reports, tax filings, or other tax documents required by the administration of this Settlement shall be prepared by the Administrator. Any expenses incurred in connection with such preparation shall be part of the Administrator Costs. Upon completion of administration of the Settlement, the Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties. Plaintiffs' Counsel shall file this declaration with the Court within seven (7) calendar days of receipt.

42. PAGA Fund Distribution. The PAGA Fund shall be distributed pursuant to Labor Code section 2699(i) as follows:

- a. 75% of the PAGA Fund shall be paid directly to the LWDA.
- b. The PAGA Member Fund, (25% of the PAGA Fund) shall be paid directly to PAGA Members, including Plaintiffs. This PAGA Member Fund shall be paid to all PAGA Members pro rata based upon the proportional number of pay periods worked by each PAGA Member in the positions of Babysitter, Maintenance Detail Crew, Equipment Tech, Facility Manager, Club Pride Supervisor, Janitor, Facility Supervisor, Front Desk Staff, Security, and Membership Sales Counselor during the Covered Period. A pay period shall mean the period in which a wage statement was issued to a PAGA Member for hours worked during the Covered

Period. Defendant issued wage statements to PAGA Members twice monthly during the Covered Period for hours worked. All PAGA Members will be credited with at least one pay period.

43. PAGA Member Fund Distribution. The PAGA Member Fund shall be distributed according to the terms below:

- a. Within five (5) business days after the Effective Date, Defendant shall provide the Administrator with the PAGA Members' Information.
- b. The Administrator shall use the PAGA Members' Information solely for the purpose of giving notice of the right to a share of the funds. PAGA Members' Information shall be kept confidential by the Administrator and will not be disclosed to anyone other than as required to report to applicable taxing authorities or as required to carry out the reasonable efforts to identify PAGA Members' Information – pursuant to Defendant's express written authorization – or by order of the Court. Within ten (10) business days after Defendant provides the Administrator with the PAGA Members' Information and prior to mailing, the Administrator shall run all the addresses provided in the PAGA Members' Information through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information.
- c. Within eight (8) business days of receiving the PAGA Members' Information from Defendant, the Administrator will circulate to counsel for all Parties an anonymized spreadsheet containing the estimated Individual Settlement payments

to each PAGA Member and the data used to calculate said payments. The Administrator shall advise the parties if it believes the Escalator Clause in Paragraph 53 to be triggered. The Administrator shall obtain approval from all counsel of the calculations before mailing Individual Settlement payments. Final approval of the list shall be provided no later than five (5) business days from the Administrator's notice. By this time, Defendant shall also wire transfer any additional amounts owed under the Gross PAGA Amount to the qualified settlement fund set up and maintained by the Administrator.

44. Notice and Individual Settlement Payments. Within two (2) business days of receiving approval from counsel of the payment calculations as provided above, the Administrator shall mail copies of the Notice with each PAGA Member's check for his or her Settlement payment. Further, the Administrator will calculate the amount to be received by each PAGA Member, which will be based on the formula set forth in Paragraph 42 (b), *supra*. Any envelopes containing checks returned as non-deliverable on or before the Void Date shall be re-mailed via First-Class U.S. Mail to the forwarding address affixed thereto within five (5) business days of receipt by the Administrator. If no forwarding address is provided, the Administrator will, within (5) business days, promptly attempt to determine the correct address using a skip trace, or other search using the name, address or Social Security number of the PAGA Employee involved, and will then perform a single re-mailing. Re-mailings of envelopes containing Individual Settlement Payments will not extend beyond the Void Date. Such mailing to PAGA Members shall be conclusive evidence of payment and shall satisfy any and all due process requirements.

45. Tax Consequences. The Parties agree that the Individual Settlement Check sent to each PAGA Member for his/his individual number of PAGA Pay Periods will be characterized 100% as penalties, and a Form 1099 will be issued to each PAGA Member by the Administrator. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Each individual who receives a payment from this Settlement will be responsible for payment of any taxes owing on said amount. Neither Defendant, Defense counsel, nor PAGA Counsel are responsible for any tax obligations regarding the allocation of the Individual Settlement Payments.

46. Payment of Remainder. Within two (2) business days of receiving approval from counsel of the payment calculations, the Administrator will distribute the following additional payments: (1) the 75% share of the PAGA Member Fund to the LWDA; (2) Court-approved attorneys' fees and costs to PAGA Counsel; and (3) Court-approved Administrator costs to the Administrator.

47. Payment of Attorney's Fees and Attorney's Costs. Within two (2) business days of receiving the wire transfer of the Gross PAGA amount, the Administrator shall pay the Court-approved Attorney's Fees and Attorney's Costs to Plaintiffs' Counsel. Plaintiffs' Counsel agrees to provide the Administrator with an executed IRS Form W-9 before such payments are issued. The Administrator shall issue an IRS Form 1099 to Plaintiffs' Counsel for the payments made pursuant to this paragraph.

48. Payment of Administrator Costs. Within two (2) business days of completing the mailing of the Individual Settlement Payments, and completing the payment of Attorney's Fees and Attorney's Costs, the Administrator shall pay to itself the Court-approved Administrator Costs.

49. Accounting. Within fifteen (15) business days of receiving approval from counsel of the payment calculations, the Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement.

50. Uncashed Checks. Individual Settlement Checks shall remain valid and negotiable for one hundred eighty (180) calendar days after the date of their issuance. In the event that the Administrator mails a check to a PAGA Member that remains uncashed after one hundred twenty (180) days, such payment shall be sent to the State of California, Controller's Office, Unclaimed Property Division, for further handling on behalf of the PAGA Member(s).

51. No Further Funding Requirements Beyond Gross PAGA Amount. Defendant's monetary obligation under this Agreement is limited to the Gross PAGA Amount. Other than as described in paragraph 54, Defendant shall not be called upon or required to contribute any additional monies above the Gross PAGA Amount.

52. Notwithstanding the above, in the event that this Agreement is canceled, rescinded, terminated, voided, or nullified, in whole or in part, however that may occur, or the Settlement is barred by operation of law, or invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant will cease to have any obligation to pay any portion of the Gross PAGA Amount to anyone under the terms of this Agreement, and all previous disbursements from the Gross PAGA Amount will immediately be paid back to Defendant by the person(s) and/or entity(ies) who received such disbursement.

VIII. RELEASE

53. PAGA Release. Upon the Effective Date of this Settlement, Plaintiffs, the PAGA Members, and the State of California shall, for the Covered Period, fully release and forever discharge Released Parties from the Released Claims.

54. Adjustment. The settlement negotiations are premised on the assumption that 3,419 PAGA Members worked exactly 16,726 pay periods from December 1, 2019 through March 15, 2020. If, as a result of any clerical error by Defendant or any dispute(s) by PAGA Members, the Administrator determines that the total number of pay periods during the Covered Period is not 16,726, then if the total number is more, the Gross PAGA Amount will increase by \$25 for each additional pay period in excess of 16,726 and if the total number is less, the gross PAGA amount will decrease by \$25 for each pay period less than 16,726. If the Administrator makes such a determination, it shall notify PAGA Counsel and Defendants counsel at the same time it circulates the estimated Individual Settlement Payments as described in Paragraph 43(c).

55. Plaintiffs' PAGA Release. Each Plaintiff specifically represents, warrants, acknowledges, affirms and agrees that upon approval of this Settlement by the Court, each Plaintiff is releasing all of his or her individual claims for civil penalties under the PAGA and that he or she therefore will no longer be an "aggrieved employee" under PAGA, and that, except to seek approval of the PAGA settlement in the Lawsuit pursuant to California Labor Code section 2699(I), he or she will have no standing to act as a named or representative Plaintiff in any action against Defendant or any of them or any of the other Released Parties under PAGA based upon any event occurring prior to the date of execution of this Agreement. That is, each Plaintiff specifically represents, warrants, acknowledges, affirms and agrees that he or she would be barred under claim preclusion from bringing any subsequent administrative action, civil

action or arbitration under PAGA based upon any event occurring prior to the date of execution of this Agreement.

56. Confidentiality. Except as provided below, to the extent necessary to effectuate the Settlement or as required by court or legal process, Plaintiffs will keep the terms of this Settlement confidential, unless ordered by the Court. Neither Plaintiffs nor PAGA Counsel, directly or indirectly, shall issue a press release or hold a press conference, publish information about the Settlement on any website, or otherwise publicize the Settlement, except that Plaintiffs and/or Plaintiffs' Counsel may submit the Settlement to the LWDA as required under PAGA. Plaintiffs and Plaintiffs' Counsel agree not to respond to any press inquiries concerning the Settlement except to refer any press inquiries to the papers filed with the court.

IX. PAYMENT OF THE SETTLEMENT

57. Within five (5) business days after the Effective Date, Defendant shall wire transfer the Gross PAGA Amount (i.e., \$334,530.00) to the qualified settlement fund setup and maintained by the Administrator.

X. PARTIES' AUTHORITY

58. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions hereof.

XI. MUTUAL FULL COOPERATION

59. The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to, execution of such documents, and to take such other action(s) as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement, and any other efforts that may become necessary by Order of the Court, or otherwise,

to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Agreement, PAGA Counsel shall, with the assistance and cooperation of Defendant and their respective counsel, take all necessary steps to secure the approval of this Settlement from the Court.

XII. NO PRIOR ASSIGNMENTS

60. The Parties hereto represent, covenant and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

XIII. NO ADMISSION

61. The Parties agree that this Agreement does not constitute an admission by Defendant or any of the Released Parties of any of the matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Defendant or the Released Parties. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

XIV. ATTORNEYS' FEES, COSTS AND EXPENSES

62. Except as specifically set forth herein, each of the Parties shall bear its/his/their own attorneys' fees, costs and expenses, taxable or otherwise, incurred by him/it/them arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Settlement.

XV. CONSTRUCTION

63. Acknowledgement that the Settlement is Fair and Reasonable. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, extensive arm's-length negotiations between the Parties and were achieved pursuant to mediation with David A. Rotman, Esq. The Parties further acknowledge that they are each represented by competent counsel and have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

64. Complete Agreement. Except for the Confidential Individual Settlements Agreement and General Release that the Parties executed contemporaneously with this Agreement, this Agreement supersedes all prior agreements, written or oral, between or among the Parties. Except for the Confidential Individual Settlement Agreement and General Release that the Parties executed contemporaneously with this Agreement, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid.

65. Governing Law. This Agreement in all respects shall be interpreted, enforced, and governed by and under the laws of the State of California applicable to instruments, Persons, and transactions which have legal contacts and relationships solely within the State of California. Any action pertaining to the terms of this Agreement that is not covered by Paragraph 54 shall be brought in a court of competent jurisdiction located in the State of California.

XVI. CAPTIONS AND INTERPRETATIONS

66. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this

Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

XVII. MODIFICATION

67. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XVIII. MISCELLANEOUS

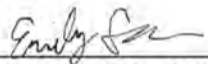
68. Beneficiaries. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

69. Counterpart Execution. This Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be signed and/or transmitted electronically (as PDF or DocuSign files) or by facsimile.

70. Jurisdiction. The Parties agree that, upon approval by the Court, this Settlement shall be enforceable by the Court, and the Court shall retain exclusive and continuing equity jurisdiction of this action over all Parties to interpret and enforce the terms, conditions and obligations set forth in this Settlement. The Parties agree that if any provision of this Settlement is determined to be invalid, the invalid portion shall be deemed severed and the remaining Settlement deemed enforceable, which the Parties shall cooperate to effectuate. The Parties intend for this Agreement to be enforceable pursuant to Code of Civil Procedure section 664.6.

THE PARTIES HAVE READ AND FULLY CONSIDERED THIS AGREEMENT AND ARE MUTUALLY DESIROUS OF ENTERING INTO SUCH AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE AMONG THE PARTIES. THE PARTIES HAVE BEEN REPRESENTED BY COUNSEL IN CONNECTION WITH THE EXECUTION OF THIS AGREEMENT. HAVING ELECTED TO EXECUTE THIS AGREEMENT AND TO FULFILL THE PROMISES SET FORTH HEREIN, PLAINTIFFS FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS HE HAS OR MIGHT HAVE AGAINST RELEASED PARTIES.

DATED: 11/15/2022 _____



EMILY FERRER

DATED: _____

ELIJAH WESTCOTT

DATED: _____

MANUEL BANUELOS MACIAS

DATED: _____

FITNESS INTERNATIONAL, LLC
By (NAME, position)

THE PARTIES HAVE READ AND FULLY CONSIDERED THIS AGREEMENT AND ARE MUTUALLY DESIROUS OF ENTERING INTO SUCH AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE AMONG THE PARTIES. THE PARTIES HAVE BEEN REPRESENTED BY COUNSEL IN CONNECTION WITH THE EXECUTION OF THIS AGREEMENT. HAVING ELECTED TO EXECUTE THIS AGREEMENT AND TO FULFILL THE PROMISES SET FORTH HEREIN, PLAINTIFFS FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS HE HAS OR MIGHT HAVE AGAINST RELEASED PARTIES.

DATED: _____

EMILY FERRER

DATED: 09 / 24 / 2022

elijahwestcott

ELIJAH WESTCOTT

DATED: _____

MANUEL BANUELOS MACIAS

DATED: _____

FITNESS INTERNATIONAL, LLC
By (NAME, position)

APPROVED AS TO FORM AND CONTENT:

THE PARTIES HAVE READ AND FULLY CONSIDERED THIS AGREEMENT AND ARE MUTUALLY DESIROUS OF ENTERING INTO SUCH AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE AMONG THE PARTIES. THE PARTIES HAVE BEEN REPRESENTED BY COUNSEL IN CONNECTION WITH THE EXECUTION OF THIS AGREEMENT. HAVING ELECTED TO EXECUTE THIS AGREEMENT AND TO FULFILL THE PROMISES SET FORTH HEREIN, PLAINTIFFS FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS HE HAS OR MIGHT HAVE AGAINST RELEASED PARTIES.

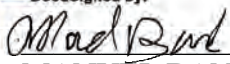
DATED: _____

EMILY FERRER

DATED: _____

ELIJAH WESTCOTT

DATED: 11/9/2022 _____

DocuSigned by:


MANUEL BANUELOS MACIAS

DATED: _____

FITNESS INTERNATIONAL, LLC
By (NAME, position)

THE PARTIES HAVE READ AND FULLY CONSIDERED THIS AGREEMENT AND ARE MUTUALLY DESIROUS OF ENTERING INTO SUCH AGREEMENT. THE TERMS OF THIS AGREEMENT ARE THE PRODUCT OF MUTUAL NEGOTIATION AND COMPROMISE AMONG THE PARTIES. THE PARTIES HAVE BEEN REPRESENTED BY COUNSEL IN CONNECTION WITH THE EXECUTION OF THIS AGREEMENT. HAVING ELECTED TO EXECUTE THIS AGREEMENT AND TO FULFILL THE PROMISES SET FORTH HEREIN, PLAINTIFFS FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS HE HAS OR MIGHT HAVE AGAINST RELEASED PARTIES.

DATED: _____

EMILY FERRER

DATED: _____

ELIJAH WESTCOTT

DATED: _____

MANUEL BANUELOS MACIAS

DATED: 12/9/22

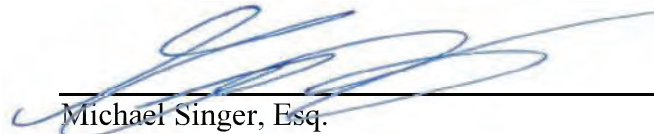


FITNESS INTERNATIONAL, LLC
By (NAME, position)

Robert P. Buent, SVP, Legal

APPROVED AS TO FORM AND CONTENT:

DATED: 11/15/2022



Michael Singer, Esq.
Marta Manus, Esq.
Counsel for Plaintiffs
EMILY FERRER

DATED: _____

Mark A. Ozzello Esq.
Brandon K. Brouillette, Esq.
Joseph Hakakian, Esq.
Counsel for Plaintiffs
MANUEL BANUELOS MACIAS

DATED: _____

Haig B. Kazandjian, Esq.
Cathy Gonzalez, Esq.
Melissa R. Robinson, Esq.
Counsel for Plaintiffs
ELIJAH WESTCOTT

APPROVED AS TO FORM AND CONTENT:

DATED: _____

Michael Singer, Esq.
Marta Manus, Esq.
Counsel for Plaintiffs
EMILY FERRER

DATED: November 9, 2022



Mark A. Ozzello Esq.
Brandon K. Brouillette, Esq.
Joseph Hakakian, Esq.
Counsel for Plaintiffs
MANUEL BANUELOS MACIAS

DATED: _____

Haig B. Kazandjian, Esq.
Cathy Gonzalez, Esq.
Melissa R. Robinson, Esq.
Counsel for Plaintiffs
ELIJAH WESTCOTT

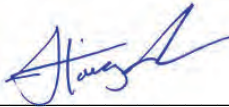
DATED: _____

Michael Singer, Esq.
Marta Manus, Esq.
Counsel for Plaintiffs
EMILY FERRER

DATED: _____

Mark A. Ozzello Esq.
Brandon K. Brouillette, Esq.
Joseph Hakakian, Esq.
Counsel for Plaintiffs
MANUEL BANUELOS MACIAS

DATED: 9/26/2022



Haig B. Kazandjian, Esq.
Cathy Gonzalez, Esq.
Melissa R. Robinson, Esq.
Counsel for Plaintiffs
ELIJAH WESTCOTT

EXHIBIT A

[Mailing Date]
[Administrator's info]

NOTICE OF SETTLEMENT

Insert: PM Name
Insert: PM Address

Re: Private Attorneys General Act Action --- ***Ferrer v. Fitness International, LLC***
S.D.S.C. Case No. 37-2020-00044088-CU-OE-CTL (filed December 2, 2020)

Dear [NAME]:

Three former employees of Fitness International, LLC (commonly known as LA Fitness and referred herein as "Defendant"), filed a lawsuit against LA Fitness. This lawsuit was alleged on behalf of themselves and certain employees of LA Fitness. LA Fitness denies these allegations and denies any liability or wrongdoing of any kind associated with these allegations.

On XXXX, the Court issued an Order approving settlement of the claims pursuant to the Private Attorneys General Act of 2004 (Labor Code § 2698 *et seq.*) ("PAGA").

Pursuant to the Court's Order, a payment of \$334,530 was approved to settle the claims in the lawsuit alleged on behalf of LA Fitness' employees. After accounting for Plaintiffs' Counsel's attorneys' fees of \$131,666.67 and reimbursement of litigation costs of \$xx,xxx, administration expenses to CPT Group, Inc., of \$xx,xxx, the remaining sum called the PAGA Fund will be divided pursuant to California law as follows: \$xxx,xxx (75%) to the State of California Labor Workforce Development Agency and \$xxx,xxx (25%) to all PAGA Members to be shared on a proportionate basis. PAGA Members are defined as: All current and former non-exempt employees of Fitness International, LLC who worked during pay periods from December 1, 2019 through March 15, 2020 in the following positions: Babysitter, Maintenance Detail Crew, Equipment Tech, Facility Manager, Club Pride Supervisor, Janitor, Facility Supervisor, Front Desk Staff, Security, and Membership Sales Counselor.

The enclosed check represents your pro rata share of the settlement amount and is based on the total number of pay periods you worked for La Fitness in relation to the number of pay periods worked by all PAGA Members from December 1, 2019 to March 15, 2020.

The Settlement releases Defendant from any and all claims for civil penalties under PAGA as alleged in the lawsuit for: 1) alleged failure to pay minimum wages and regular wages; 2) alleged failure to provide meal periods; 3) alleged failure to provide rest periods; 4) alleged failure to provide accurate itemized wage statements; 5) alleged failure to accurately record hours worked; 6) alleged failure to timely pay all wages due during and upon termination of employment; 7) alleged failure to provide expense reimbursements, and further releases Defendant from any and all claims, causes of action, damages, wages, benefits, expenses, penalties, interest, debts, liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature available under PAGA that were alleged in the lawsuit.

The enclosed check is valid for 180 days from the date of issuance. It is strongly recommended that you cash or deposit this check as soon as possible following receipt. Funds attributable to any uncashed checks after 180 days will be sent to the State of California, Controller's Office, Unclaimed Property Division for further handling.

If you have any questions concerning this Settlement, please contact [CLAIMS ADMIN] at XXXX.

EXHIBIT B

1 **COHELAN KHOURY & SINGER**

Michael D. Singer (SBN 115301)

2 msinger@ckslaw.com

3 Marta Manus (SBN 260132)

mmanus@ckslaw.com

4 605 C Street, Suite 200

San Diego, CA 92101

5 Telephone: (619) 595-3001/Facsimile: (619) 595-3000

6 Attorneys for Plaintiff Emily Ferrer

7 *[Additional Counsel listed on following page]*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN DIEGO**

10 EMILY FERRER, ELIJAH WESTCOTT,
11 MANUEAL BANUELOS MACIAS and on
behalf of themselves and other aggrieved
12 employees,

13 Plaintiffs,

14 v.

15 FITNESS INTERNATIONAL, LLC, a
16 California Limited Liability Company;
and DOES 1 through 100, inclusive,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

CASE NO. 37-2020-00044088-CU-OE-CTL
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Joel R. Wohlfeil
Department C-73

REPRESENTATIVE ACTION

[PROPOSED] JUDGMENT

Date: July 21, 2023
Time: 9:00 a.m.
Dept: C-73
Judge: Honorable Joel R. Wohlfeil
Reservation: 2974855

Complaint filed: December 2, 2020
Trial date: Not set

1 **HAIG B. KAZANDJIAN LAWYERS, APC**

2 Haig B. Kazandjian (SBN 278622)

3 haig@hbklawyers.com

4 Cathy Gonzalez (SBN 310625)

5 cathy@hbklawyers.com

6 Melissa Robinson (SBN 336951)

7 melissa@hbklawyers.com

8 801 North Brand Boulevard, Suite 970

9 Glendale, CA 91203

10 Telephone: (818) 696-2306/Facsimile: (818) 696-2307

11 Counsel for Plaintiff Elijah Westcott

12 **CAPSTONE LAW APC**

13 Raul Perez (SBN 174687)

14 Raul.Perez@capstonelawyers.com

15 Mark A. Ozzello (SBN 116595)

16 Mark.Ozzello@capstonelawyers.com

17 Joseph Hakakian (SBN 323011)

18 Joseph.Hakakian@capstonelawyers.com

19 1875 Century Park East, Suite 1000

20 Los Angeles, CA 90067

21 Telephone: (310) 556-4811/Facsimile: (310) 943-0396

22 Counsel for Plaintiff Manuel Banuelos Macias

Judgment is hereby entered in accordance with the terms of this Court's Order Granting Motion for Approval of Private Attorneys General Act ("PAGA") Settlement.

The "Gross PAGA Amount" generated by the Private Attorneys General Act Settlement and Release ("Settlement" or "Agreement") agreed to between Plaintiffs Emily Ferrer, Elijah Westcott, and Manual Banuelos Westcott, on behalf of themselves and other PAGA Members (defined below), and the State of California, on the one hand, and Defendant Fitness International, LLC ("Defendant") is Three Hundred, Thirty-Four Thousand, Five Hundred Thirty Dollars (\$334,530.00), which represents the maximum amount payable in this Settlement by Defendant and is the maximum amount Defendant can be required to pay under this Settlement. Through its Order Granting Motion for Approval of Private Attorneys General Act ("PAGA") Settlement, the Court has authorized the following distributions from the Gross PAGA Amount: (1) \$131,666.67 to Plaintiffs' Counsel for attorneys' fees; (2) \$21,366.76 to Plaintiffs' Counsel for litigation costs; and (3) \$16,250.00 to CPT Group, Inc., the administrator, for the costs associated with administering the Settlement.

After the aforementioned deductions are made from the Gross PAGA Amount, the remaining sum of \$165,246.57 constitutes the "PAGA Fund," which shall be distributed pursuant to Labor Code section 2699(i) as follows: 75% of the PAGA Fund, \$123,934.93, be paid to the Labor Workforce Development Agency; and 25% of the PAGA Fund, \$41,311.64, be paid to all current and former non-exempt employees of Fitness International, LLC who worked in the following positions during the Covered Period (the pay periods from December 1, 2019 through March 15, 2020) in California: Babysitter, Maintenance Detail Crew, Equipment Tech, Facility Manager, Club Pride Supervisor, Janitor, Facility Supervisor, Front Desk Staff, Security, and Membership Sales Counselor (collectively, "PAGA Members") according to the method set forth in the Agreement for calculating Individual Settlement Payments.

Pursuant to California Code of Civil Procedure section 664.6, and California Rules of Court, Rule 3.769(h), the Court shall retain continuing jurisdiction over this action and the Parties, including after entry of this Judgment, to the fullest extent necessary to interpret,

1 enforce and effectuate the terms and intent of the Settlement

2 This document shall constitute a judgment for purposed of California Rules of Court,
3 Rule 3.769(h).

4 **IT IS SO ORDERED.**

5
6 Dated: _____

The Honorable Joel R. Wohlfeil
Judge of the Superior Court

EXHIBIT 2

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC•

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305
Telephone: (619) 595-3001
Facsimile: (619) 595-3000
www.ckslaw.com

JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA
ROSEMARY C. KHOURY

(† Also admitted in Illinois)

September 22, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED MAIL (RETURN RECEIPT)

Fitness International, LLC
3161 Michelson Dr., Ste. 600
Irvine, California 92612

Fitness International, LLC
c/o CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, California 90017

Re: NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION 2699.3

This letter shall serve as Emily Ferrer's (hereafter "Claimant") *Notice* pursuant to the California Private Attorneys General Act ("PAGA"), California Labor Code sections 2698, *et seq.* regarding her wage and hour claims against Fitness International, LLC (referred to herein as "the Employer."). Claimant submits this notice on behalf of herself and all current and former exempt and/or non-exempt employees in California who during the one year preceding the date of this notice suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

Claimant and other aggrieved employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the Labor Code and caused violation of the Labor Code as set forth below.

FACTUAL ALLEGATIONS

Claimant worked for Fitness International, LLC as Front Desk/ Kids Klub Attendant from approximately February 25, 2019 until July 2020.

At all relevant times at least one year prior to the date of this Notice, the Employer subjected Claimant and aggrieved employees to policies and practices which caused the violations of the Labor Code as described herein.

The Employer failed to pay Claimant and aggrieved employees all minimum, regular, and overtime wages for all applicable hours of work, including the time spent opening and closing the fitness club. Claimant and other aggrieved employees were required to open up the club, turn on the lights, and bootup the computers prior to clocking-in. Similarly, Claimant and other employees were required to clock-out, and then close-up the fitness club while off-the clock. The time spent opening up and closing the fitness club was compensable time, but the Employer failed to pay any

wages for this time spent working and under the direction and control of the Employer. As a result, the Employer failed to pay at least minimum wage for all hours worked. To the extent this time should have been compensated at overtime rates, the Employer failed to pay all applicable overtime wages.

The Employer further failed to pay all overtime wages for all overtime hours worked because it failed to properly calculate the regular rate of pay for purposes of calculating overtime rates (time and a half and double-time rates). Claimant and other aggrieved employees were eligible to earn, and did earn, more than one base hourly rate as well as non-discretionary compensation, including non-discretionary incentive pay, commissions, and flat sum bonuses. Claimant and aggrieved employees worked overtime during the same workweek in which they worked at more than one base hourly rate and/or earned additional nondiscretionary compensation. However, all remuneration was not properly calculated into the regular rate of pay and as a result the overtime wages were not calculated using the correct regular rate of pay. Accordingly, the Employer failed to pay all overtime wages.

The Employer subjected all aggrieved employees to policies and practices which failed to provide compliant meal and rest periods. The Employer did not maintain a compliant meal and rest period policy applicable to Claimant and other aggrieved employees. For example, the Employer's policy did not state meal periods must be provided before the end of the 5th hour of work. Claimant and other aggrieved employees were not authorized and permitted to take lawful rest and meal periods.

Claimants and other aggrieved employees were not provided an opportunity each shift to take off-duty, timely, uninterrupted meal periods lasting at least 30 minutes. They were required to remain on-duty unless there was another employee on-duty to relieve him or her. Due to the understaffing, Claimant and other aggrieved employees were often the sole employee on-duty. As a result, they were not permitted to take a complete off-duty meal or rest period because there was not another person available to relieve him or her. For the same reasons, Claimant and other aggrieved employees were not provided an opportunity to take a second uninterrupted, off-duty, thirty-minute meal period on shifts lasting more than 10 hours. If they were provided a "meal period," Claimant and other aggrieved employees' meal periods were on-duty, late, interrupted, and/or shorter than thirty minutes. Rest periods were similarly late, on-duty, interrupted or short.

Claimant and other aggrieved employees were not informed of their right to take rest periods and they were not authorized or permitted to take off-duty rest periods of at least 10 minutes. The Employer never paid one hour of wages at a regular rate of pay for non-compliant rest and meal periods, as required by Labor Code section 226.7 and sections 11 and 12 of the applicable IWC Wage Order.

Furthermore, the Employer failed to provide sick pay at the proper accrual rates and at the correct regular rate of pay as required by Labor Code section 246.

Furthermore, the Employer failed to record (and maintain records) reflecting when the employees begin and end each work period, including meal periods. The Employer further failed to record the total hours worked.

The Employer failed to provide wage statements to Claimant and other aggrieved employees. The paystubs provided to Claimant and other aggrieved employees did not contain all accurate information as required by Labor Code section 226(a). Because, as described above, the Employer failed to pay all minimum, regular, overtime, and all meal and rest premium wages, it failed to accurately set forth the total gross wages earned, net wages earned, total hours worked, and all applicable hourly rates and the total number of hours worked.

During her employment, Claimant was not paid all wages within the time set forth in Labor Code section 204 due to the failure to pay all minimum, regular, and overtime wages and all meal and rest period premium wages as described herein.

Additionally, the Employer failed to pay Claimant and aggrieved employees within the time required because it did not pay all wages earned as set forth herein. Claimant is informed and believes that the Employer has no policy and/or practice to comply with Labor Code sections 201, 202, and 203 as to all separated employees in California by timely paying final wages and paying waiting time penalty wages when failing to timely pay final wages. On information and belief, Claimant maintains that the Employer maintained a regular practice of failing to pay separated employees within the time requirements of Labor Code sections 201 and 202. Even if the Employer did provide employees with the final pay check within the time frame required, it nevertheless failed to pay timely because they did not pay all wages earned as set forth herein. As a result, the Employer is liable for civil penalties for their violation of labor Code sections 201 and 202.

The Employer also did not pay a day's wages for every day final pay was not paid through the date final wages were paid, as required by Labor Code section 203. Thus, aggrieved employees are owed civil penalties due to the Employer's violation of Labor Code section 203.

Claimant further alleges, based on personal experience and observations that the violations of the Labor Code described herein were suffered by other current and former employees of Employer

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 510, 1194, 1197, 1197.1, and 1198, and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

The Employer failed to pay all minimum, regular, and overtime wages required by law.

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1198 states: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked, and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

As set forth in detail above, the Employer violated Labor Code sections 510, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because the Employer did not pay Claimant and other aggrieved employees all minimum, regular, and overtime wages for all hours worked.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.2, 226.7, 512(a), and 1198, and the “Meal Periods” and “Rest Periods” Sections of the Applicable Wage Order)

As set forth herein, during the time that Claimant performed work for the Employer, the Employer did not provide Claimant and other aggrieved employees all lawful and compliant meal periods. As a result, Claimants and other employees were not authorized and permitted to take a thirty minute, uninterrupted, off-duty meal period. Claimant and other employees were required to work through their meal periods and were not permitted to leave the premises during meals. Additionally, compliant off-duty rest periods were not provided as required by the California Labor Code. During any rest break, Claimant and other employees were required to remain on-duty and make themselves immediately available to any customers who needed assistance. Accordingly, the Employer denied Claimant and other aggrieved employees with compliant meal and rest periods and the meal and rest premiums due to them under the law.

Labor Code section 226.7(c) states: “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Consequently, Claimant is entitled to receive a one-hour wage premium for each day a compliant meal period was not provided and a one-hour wage premium for each day a compliant rest period was not provided. Claimant intends to pursue all remedies, including recovery of wages, interest, attorney’s fees and costs, and penalties to the extent allowed by law.

Labor Code section 512(a) states: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Labor Code section 226.7(b) states: “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

Labor Code section 1198 states: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Pursuant to the “Meal Period” Section of the applicable IWC Wage Order, no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period will be waived by mutual consent of the employer and the employee. If an employer fails to provide an employee a meal period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

Pursuant to the “Rest Period” Section of the applicable Wage Order, every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

As set forth above, the Employer denied Claimant and aggrieved employees meal and rest periods due to them under the law. Consequently, the Employer must pay one hour of wages for each day a proper meal period was not properly provided and one hour of wages for each day a rest period was not properly provided. This applies to Claimant and all other aggrieved employees who were not provided with legally compliant meal periods and rest breaks.

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Labor Code §§ 246(i), 226(a), 226.3, 1198, and 2699, and the
“Records” Section of the Applicable Wage Order)

Labor Code section 226(a) states in pertinent part, “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of

the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer. . .; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee... and if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.”

Furthermore, Labor Code section 226(e)(2)(A) states: “An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.”

Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney’s fees.

Labor Code section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee’s wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

The Employer failed to provide Claimant with an accurate, timely itemized wage statement complying with the requirements of the Labor Code and applicable IWC Wage Order and failed to provide written notice of the sick leave available. Claimant will pursue all remedies, including recovery of wages, interest, attorneys’ fees and costs, penalties and those provided by the PAGA, to the extent allowed by law, on behalf of herself and other aggrieved employees of the Employer.

FAILURE TO PROVIDE PAID SICK LEAVE

(Labor Code §§ 246, 248.5)

Labor Code section 246 grants the right to employees to paid sick days. Specifically, Labor Code section 246(b) states that:

(1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.

(2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee's normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.

(3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.

(4) An employer may satisfy the accrual requirements of this section by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.

Labor Code section 246(l) states:

For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

...(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

Employers violated Labor Code 246 because it did not provide paid sick leave at the correct regular rate of pay to Claimants and other current and former aggrieved employees.

**FAILURE TO TIMELY PAY WAGES DUE DURING
AND UPON TERMINATION OF EMPLOYMENT**

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699, and the "Minimum Wages" Section of the Applicable Wage Order)

Labor Code section 204(a) states, in pertinent part, "All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Section 204(d) states, "The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period." The "Minimum Wages" Section of the applicable Wage Order further states "every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period."

Labor Code section 201 states: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code section 203(a) states, in relevant part, “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 210(a) provides: “(a) In addition to, *and entirely independent and apart from, any other penalty provided in this article*, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

The Employer failed to timely pay Claimant and aggrieved employees all wages due and owing during and upon termination of employment. The Employer willfully failed to pay all wages and penalties when required by Sections 201, 201.3, 202, and 204 of the Labor Code. Therefore, the penalties to all affected employees, including Claimant.

**CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS**
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an

amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employer violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 510, 1197, and 1198, and caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, the Employer is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

As set forth above, Fitness International, LLC were the employers, or other person acting on behalf the employer, and violated, or caused to be violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 203, 226, 226.7, 1194, 2802, 510, 512, 1197, and 1198, and caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, the Employer is each liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5 and § 7 of the Applicable IWC Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. the Employer violated this requirement by its failure to accurately record employee hours worked and/or paid. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code section 1174. (d). Furthermore, Claimant and all other current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employer violated Labor Code section 1174 by failing to maintain accurate time records.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, 2699, *et seq.*, and 2802)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, reimbursements, damages, liquidated damages and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code section 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, Fitness International, LLC is liable for these items in addition to the unpaid wages and reimbursements. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of Fitness International, LLC's unlawful actions.

CONCLUSION

The Employer violated labor code sections as set forth herein. Claimant will pursue all remedies on behalf of herself and other aggrieved employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, she reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint for damages. Should you have any questions, please feel free to contact me at your convenience.

Sincerely,
COHELAN KHOURY & SINGER



Kristina De La Rosa

EXHIBIT 3

**HAIG B.
KAZANDJIAN**
LAWYERS | APC

October 16, 2020

BY U.S. CERTIFIED MAIL

California Labor & Workforce Development Agency
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

Fitness International, LLC
Agent for Service of Process
C T Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

JEFFREY STEIN
Agent for Service of Process
C T Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

**Re: Notice of Labor Law Violations, California Labor Code Section 2698 Et. Seq. to
Fitness International, LLC and Jeffrey Stein**

Dear Labor and Workforce Development Agency Representative,

We are writing on behalf of Mr. Elijah Westcott ("EMPLOYEE") who seeks penalties from Fitness International, LLC, dba LA Fitness ("EMPLOYER"), and Jeffrey Stein ("AGENT") on his own behalf, on behalf of the State of California, and on behalf of all others similarly situated for violations of the California Labor Code and applicable wage law, including but not limited to: California Labor Code sections 201, 202, 203, 204, 206, 226(a), 226.7, 246, 510, 512(a), 1174(d), 1174.5, 1182.12, 1194, 1197, 1197.1 1198, 2802, and 2810.5.

EMPLOYEE intends to seek civil penalties, attorney's fees, costs, and any and all other available relief for violations of the California Labor Code made recoverable under sections 2698, *et seq.*, the Labor Code Private Attorney General Act of 2004 ("PAGA"). EMPLOYEE seeks relief on his own behalf, on behalf of the State of California, and on behalf of all others who were employed by EMPLOYER, each who suffered one or more Labor Code violations specifically enumerated in the Private Attorney General Act ("aggrieved employees"). This letter is sent in compliance with and pursuant to the reporting requirements of California Labor Code section 2699.3.

**HAIG B.
KAZANDJIAN**
LAWYERS | APC

Factual Background

EMPLOYER employed EMPLOYEE as an hourly-paid, non-exempt employee at its 144 S Brand Blvd., Glendale, CA 91204 location from approximately December 23, 2019 through March 10, 2020. EMPLOYEE received his last paycheck on or about March 11, 2020. While employed by EMPLOYER, EMPLOYEE worked as a Sales Agent, providing on-site sales support for generating new fitness memberships.

EMPLOYEE is informed, believes, and thereupon alleges that Fitness International, LLC is a California corporation licensed to do and doing business in California. EMPLOYER provides public fitness clubs and facilities. EMPLOYER has approximately 90 locations in California, and additional locations throughout the United States.

EMPLOYEE is informed, believes, and thereupon alleges that AGENT is an officer and/or agent of the above entity. Acting in that capacity, at all relevant times AGENT oversaw, managed, and/or was otherwise personally responsible for employee compliance with California Labor Code 558 and 558.1. This includes, but is not limited to, employee use of the EMPLOYER'S timekeeping system and how EMPLOYEE clocked in and out.

EMPLOYEE is informed, believes, and thereupon alleges that at all relevant times, the above-named EMPLOYER instituted and implemented standard practices and procedures for all hourly and/or non-exempt employees in California. This includes, but is not limited to, using EMPLOYER'S payroll/time management system for payroll processing, dissemination of wage statements, oversight and approval of rest breaks, meal breaks, and timekeeping.

EMPLOYEE seeks penalties on behalf of the State of California and all current and former hourly-paid, non-exempt employees EMPLOYEE approximates EMPLOYER employ(s) over 10,000 employees ("aggrieved employees") who worked for EMPLOYER during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA"). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same.

The facts¹ of the aforementioned violations of the California wage-and-hour laws include, but are not limited to, the facts referenced herein.

Violation of Labor Code 226, 432, 1198.5 (Failure to Provide Employment Records)

California Labor Code Section 226 provides, "An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former

¹ EMPLOYEE reserves the right to present and/or reference further evidence as it is discovered.

HAIG B. KAZANDJIAN

LAWYERS | APC

employee [records of hours worked and wages paid]... shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.”

California Labor Code Section 432 provides, “If an employee signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.”

California Labor Code Section 1198.5 provides that every employee shall be permitted to inspect and obtain a copy of their personnel records upon request.

In accordance with the process set out in Labor Code Section 226, EMPLOYEE requested, in writing by letter via certified first class mail to EMPLOYER, and regular first class mail to EMPLOYERS’ California agent for service of process, that EMPLOYER provide him with his wage and payroll history, all documents signed by EMPLOYEE pursuant to Labor Code Section 432, and a copy of his personnel records pursuant to Labor Code Section 1198.5. Receipts indicate that the correspondence was delivered to EMPLOYERS’ principal place of business.

Attached as “Exhibit A” is a true and correct copy of the aforementioned correspondence.

Pages seven (7) and eight (8) of Exhibit A reflect that EMPLOYEE first requested the employment documents to which he is statutorily entitled on March 17, 2020. Pages one (1) through six (6) of Exhibit A show that because of EMPLOYER’s refusal to respond to EMPLOYEE’s initial request, on April 12, 2020 EMPLOYEE was forced to again demand the employment documents to which he is statutorily entitled, along with a Complaint for Damages and Other Relief.

Page 9 of Exhibit A indicates that EMPLOYER finally responded to EMPLOYEE’s requests on August 19, 2020 – more than five (5) months after EMPLOYEE’s initial request, and more than four (4) months after EMPLOYEE’s second request for the employment documents to which he is statutorily entitled, far exceeding the time period within which EMPLOYER was required to respond by pursuant to Labor Code Section 226 and 432, and 1198.5.

Further still, EMPLOYER has not provided all of the information and/or documents requested, including, but not limited to, EMPLOYEE’s pay stubs.

Pursuant to the foregoing, EMPLOYEE is entitled to recover a \$750 penalty pursuant to Labor Code Section 226(f), a \$750 penalty pursuant to Labor Code Section 1198.5(k), and reimbursement for costs, including attorney’s fees as afforded under applicable law, including, but not limited to, Labor Code Sections 226(f) and 1198.5(k).

**HAIG B.
KAZANDJIAN**
LAWYERS | APC

Violation of Labor Code 510 (Overtime and Double Time)

California Labor Code sections 510 and the applicable Wage Orders require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a week at the rate of at least time-and-one-half (1.5) times their regular rate of pay ("overtime") for time such worked, and two (2) times their regular rate of pay ("double time") for such hours worked in excess of twelve (12) hours in a day. "Regular rate" includes all remuneration, including non-discretionary bonuses and incentives.

During the relevant time period, EMPLOYEE and other aggrieved employees regularly worked in excess of eight (8), and in excess twelve (12), hours in a workday and/or forty (40) hours in a workweek.

Attached as "Exhibit B" are examples of such violations.

Page one (1) and page two (2) of Exhibit B show that EMPLOYER records indicate that EMPLOYEE clocked-in and clocked-out almost invariably throughout his employment on whole, round numbers. Such records do not appear when EMPLOYER is accurately recording the time that EMPLOYEE spent under EMPLOYER's control, but instead occur when EMPLOYER is merely recording EMPLOYEE's scheduled hours of work.

As a result, EMPLOYEE was not paid for the substantial amount of time he spent working outside his scheduled hours of work, including his meal breaks and before and after his scheduled shifts.

EMPLOYER willfully failed to pay EMPLOYEE and other hourly-paid, non-exempt employees the wages to which they were entitled. EMPLOYER routinely required this work to be performed before and/or after scheduled shifts, and/or during off-the-clock meal breaks, and/or during rest breaks.

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f)-(g).

Violation of Labor Code 226.7 and 512(a) (Rest and Meal Breaks)

California Labor Code sections 226.7, 512(a), and the applicable Wage Orders require employers to pay employees one (1) additional hour of pay at the employees' regular rate for each work day that a meal or rest period was not provided. Additionally, employers cannot require, cause, or permit an employee to work more than five (5) hours per day without providing an uninterrupted meal break. If an employee works over ten (10) hours in a workday, employers are required to either provide a second, uninterrupted thirty (30) minute meal break or pay employees an additional one (1) hour of pay at the employees' regular rate. No employer shall require an

**HAIG B.
KAZANDJIAN**
LAWYERS | APC

employee to work during any rest period. Rest periods are based on the total hours worked in a day, at ten (10) minutes per four (4) hours or major fraction thereof.

EMPLOYER failed to provide EMPLOYEE and other aggrieved employees with the required rest and meal break periods. EMPLOYEE and other aggrieved employees were routinely required to work through these periods instead, because of understaffing, inadequate coverage, unreasonably high workload and expectations, and/or other actions, inactions, or decisions made by and within the sole control and discretion of EMPLOYER.

EMPLOYEE and other aggrieved employees worked shifts in excess of five (5) hours without a meal break, and worked shifts of ten (10) hours or more without a second meal break, due to understaffing, inadequate coverage, unreasonably high workload and expectations, and/or other actions, inactions, or decisions made by and within the sole control and discretion of EMPLOYER.

Attached as "Exhibit B" are examples of such violations.

Page one (1) and page two (2) Exhibit B show that EMPLOYER records indicate that EMPLOYEE almost invariably received an exactly one (1) hour lunch break every day that he worked for EMPLOYER. Such whole, round numbers do not occur when EMPLOYER is recording the time that EMPLOYEE actually spent on their lunch breaks, but instead occur when EMPLOYER is merely recording when EMPLOYEE is scheduled to take their lunch.

Furthermore, on page one (1) of Exhibit B, EMPLOYER records indicate that EMPLOYEE "waived" their lunch break on January 7, 2020 despite such being contrary to law.

EMPLOYER records fail to properly indicate that lunches were routinely taken late on Mondays because EMPLOYEE and other aggrieved employees would be tasked with promoting on college campuses, or that lunches were routinely taken after 4:00 p.m. on Thursdays and Fridays.

EMPLOYEE alleges that any purported appearance of meal and rest break compliance is because EMPLOYER systematically and routinely clocked out for and/or otherwise altered the timekeeping records of EMPLOYEE and other aggrieved employees in an attempt to hide the aforementioned infractions. EMPLOYER, knowingly and contrary to law and public policy, employed a tactic of clocking-out employees for rest and/or meal periods that were never taken and/or otherwise falsifying or altering timekeeping records.

EMPLOYER knew, or should have known, that their behavior caused EMPLOYEE and other aggrieved employees to work through the above-described meal and/or rest periods. As a company-wide policy, EMPLOYER still chose not to pay meal and rest period premiums required by law.

**HAIG B.
KAZANDJIAN**
LAWYERS | APC

Pursuant to the foregoing, EMPLOYER violated California Labor Code sections 226.7, 512(a), and 1198. EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, and/or 2699(a), (f)-(g), and any and all other applicable law.

Violation of Labor Code 1182.12, 1194, 1197, and 1197.1 (Minimum Wage)

California Labor Code sections 1182.12, 1194, 1197, and 1197.1 require employers to pay the minimum wage as set by the IWC. California Labor Code section 1182.12, as amended by Senate Bill 3, Chapter 4, Section 3, defines the minimum wage as;

- (1) For any employer who employs 26 or more employees:
 - (A) From January 1, 2017, to December 31, 2017, \$10.50 per hour.
 - (B) From January 1, 2018, to December 31, 2018, \$11 per hour.
 - (C) From January 1, 2019, to December 31, 2019, \$12 per hour.
 - (D) From January 1, 2020, to December 31, 2020, \$13 per hour.
 - (E) From January 1, 2021, to December 31, 2021, \$14 per hour.
 - (F) From January 1, 2022, and until adjusted by subdivision (c) \$15 per hour.
- (2) For any employer who employs 25 or fewer employees:
 - (A) From January 1, 2018, to December 31, 2018, \$10.50 per hour.
 - (B) From January 1, 2019, to December 31, 2019, \$11 per hour.
 - (C) From January 1, 2020, to December 31, 2020, \$12 per hour.
 - (D) From January 1, 2021, to December 31, 2021, \$13 per hour.
 - (E) From January 1, 2022, to December 31, 2022, \$14 per hour.
 - (F) From January 1, 2023, and until adjusted by subdivision (c) \$15 per hour.

Attached as "Exhibit B" are examples of such violations.

Page one (1) and page two (2) of Exhibit B show that EMPLOYER records indicate that EMPLOYEE clocked-in and clocked-out almost invariably throughout his employment on whole, round numbers. Such records do not appear when EMPLOYER is accurately recording the time that EMPLOYEE spent under EMPLOYER's control, but instead occur when EMPLOYER is merely recording EMPLOYEE's scheduled hours of work.

As a result, EMPLOYEE was not paid for the substantial amount of time he spent working outside his scheduled hours of work, including his meal breaks and before and after his scheduled shifts.

Due to the company-wide failures of EMPLOYER, EMPLOYEE and other aggrieved employees were also forced to work off-the-clock, and/or during rest breaks, and/or during meal breaks. EMPLOYER failed to pay EMPLOYEE and other aggrieved employees minimum wage for this time and/or falsified timekeeping records to hide this fact.

**HAIG B.
KAZANDJIAN**
LAWYERS | APC

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1, and/or 2699(a), (f)-(g), and any and all other applicable law.

Violation of Labor Code 226(a), 1174(d), and 1198 (Accurate Employment Records)

California Labor Code 226(a) requires employers to create and provide to employees true and accurate employment records. California Labor Code section 226(e) provides that if an employer fails to provide an employee with same, the employee is entitled to recover the greater of all actual damages, or \$50.00 for an initial infraction, and \$100 per employee for each subsequent violation in any pay period. California Labor Code 226.3 imposes civil penalties on any employer in violation of section 226(a) at \$250 per employee violation in an initial citation, and \$1,000 per employee for each subsequent violation.

California Labor Code 1174(d) requires employers to keep payroll records showing hours worked, and wages paid to and/or number of piece-rate units earned, for all employees. California Labor Code section 1174.5 subjects employers to a \$500 penalty for failing to maintain same.

California Labor Code section 1198 provides that maximum hours and standard conditions of labor are fixed by the Labor Commissioner in the applicable Wage Orders. Pursuant to the applicable Wage Order, employers must keep accurate records of when employees begin and end each work period and each meal period.

EMPLOYER knowingly provided employees with records that do not meet the statutory requirements of truth and accuracy, because, EMPLOYER failed to truthfully and accurately document, among other things, employees off-the-clock work. Accordingly, EMPLOYER did not list the correct amount of gross or net wages earned by EMPLOYEE and other aggrieved employees.

The statements in question are deficient in many other ways, including, but not limited to: failure to provide employees with the ability to easily access wage statements and get hard copies at no expense to the employee, and/or failure to state all hours worked as a result of off-the-clock work.

EMPLOYER willfully failed to maintain accurate payroll records for EMPLOYEE and other aggrieved employees as a result of EMPLOYER failure to accurately record employees rest breaks, meal breaks, and off-the-clock work.

EMPLOYER failed to accurately keep records of start and stop times for meal periods and/or work shifts. EMPLOYER failure makes it impossible for EMPLOYEE and other aggrieved employees to accurately determine the extent of their underpayment, thereby causing further injuries to each of them.

**HAIG B.
KAZANDJIAN**
LAWYERS | APC

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g), and any and all other applicable law.

Violation of Labor Code 204 (All Wages Paid on Time)

California Labor Code section 204 requires that all wages earned, other than those due upon termination, be paid on time as defined by the statute.

EMPLOYER failed to pay EMPLOYEE and other aggrieved employees all wages due to them, including, but not limited to: overtime, minimum wages, split shift pay and/or reporting time pay within the statutorily required time period.

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210, and/or 2699(a), (f)-(g), and any and all other applicable law.

Violation of Labor Code 201, 202, and 203 (Timely Payment Upon Discharge or Resignation)

California Labor Code sections 201, 202, and 203 provide that employees who are terminated are due all wages earned immediately. Employees who resign their employment without 72-hour notice are due all wages earned in 72 hours. Employees who resign their employment giving 72-hour notice are entitled to all wages earned at the time their resignation becomes effective.

EMPLOYER terminated their employment relationship with EMPLOYEE on March 10, 2020. As such, EMPLOYEE was due all wages owed to him immediately at the time of termination.

EMPLOYEE did not receive their final pay check until on or about March 11, 2020. When EMPLOYEE did receive their final paycheck from EMPLOYER, that final paycheck was legally deficient in that it did not account for all wages earned, despite EMPLOYER knowing that such wages were due to EMPLOYEE.

EMPLOYER willfully failed to timely pay EMPLOYEE and other aggrieved employees who are no longer employed by EMPLOYER all wages earned, including, but not limited to: overtime, minimum wages, rest period premium wages, meal period premium wages, accrued time off, and/or reporting time pay.

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g), and any and all other applicable law.

**HAIG B.
KAZANDJIAN**
LAWYERS | APC

Violation of Labor Code 2810.5(a)(1)(A)-(C) (Wage Theft Prevention Act)

Codified in California Labor Code section 2810.5, California's Wage Theft Protection Act requires employers to provide employees with basic information at the time of hiring and when changes occur to their employment. The Wage Theft Protection Act provides that an employee must be furnished with written notice of, at the time of hiring; rate of pay (including overtime), whether paid by hour, salary, piece-rate, shift, day, week, commission, or otherwise, and allowances claimed such as meal or lodging. This notice must include a statement that the employee can accrue and use sick leave, has the right to request and use paid sick leave, may not be terminated or retaliated against for requesting or using paid sick leave, and has the right to file a complaint against any employer who does so retaliate.

EMPLOYER hired EMPLOYEE on or about December 20, 2019, and EMPLOYEE continued to work for EMPLOYER until on or about March 7, 2020. During that time, changes, including, but not limited to, raises, promotions, title changes, relocations, and new and additional assignments were earned by and/or assigned to EMPLOYEE. As a result of each of these, changes occurred to EMPLOYEE's employment as defined by Labor Code 2810.5(a)(1)(A)-(C) and the Wage Theft Prevention Act.

When hired and each time such changes to EMPLOYEE's employment occurred, EMPLOYER was required to furnish documents to EMPLOYEE with such basic information and written notice of, among other things, his rate of pay (including overtime), his right to accrue and request paid sick leave, and his right to file a complaint against EMPLOYER should they infringe upon such rights. EMPLOYER failed to furnish EMPLOYEE and other aggrieved employees with such written notices as required.

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g), and any and all other applicable law.

Violation of Labor Code 2800, 2802 (Reimbursement of Necessary Expenditures)

California Labor Code Sections 2800 and 2802 require that an employer indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties.

EMPLOYEE and other aggrieved employees were directed and expected to incur personal expenses on behalf of EMPLOYER while performing their job duties. Such personal expenses include, but are not limited to: use of personal cell phone, travel expenses, and parking expenses. EMPLOYEE and the other aggrieved employees would not have been able to successfully accomplish their job duties absent incurring these personal expenses. EMPLOYER failed to indemnify EMPLOYEE and other aggrieved employees for all necessary expenditures or losses accordingly.

**HAIG B.
KAZANDJIAN**
LAWYERS | APC

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g), and any and all other applicable law.

Violation of Labor Code 246 (Notice of Paid Sick Time and Accrual)

California Labor Code section 246 provides that an employee who works for the same employer for more than 30 days is entitled to paid sick days. Paid sick leave is to accrue at a rate not less than one hour per every 30 hours worked, such accrual beginning at the commencement of employment. Employers must provide employees with written notice setting the amount of sick leave available (or paid time off in lieu thereof) for use on either itemized wage statements (as described in Labor Code section 226) or in a separate writing accompanying such wage statements.

EMPLOYER failed to furnish upon EMPLOYEE, either on itemized wage statements or in a separate writing accompanying such wage statements, the amount of sick leave available to EMPLOYEE.

Pursuant to the foregoing, EMPLOYEE and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g), 248.5(e) and any and all other applicable law.

California Labor Code 558(a) (Civil Penalties)

California Labor Code section 558(a) provides that any employer, including individuals acting on behalf of employers, that violates, or causes to be violated, a section of the Labor Code or any applicable Wage Orders are subject to the following penalties;

- \$50 for any initial violation for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages;
- \$100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount to recover unpaid wages;

Labor Code section 558(c) provides that the penalties in this section are in addition to any other civil penalty.

EMPLOYER was and is an employer, acting on behalf thereof, violated EMPLOYEE and other aggrieved employees' rights by violating, or causing to be violated, various sections of this code as described throughout this notice letter.

**HAIG B.
KAZANDJIAN**
LAWYERS | APC

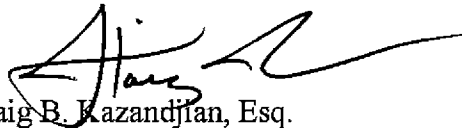
Conclusion

Pursuant to the foregoing, EMPLOYEE seeks remedies set forth in Labor Code section 558 for themselves, the State of California, and all other aggrieved employees. Pursuant to California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and 558, EMPLOYEE, acting in the public interest as Private Attorney General, seeks the applicable penalties for themselves, all other aggrieved employees, and the State of California against EMPLOYER for violations of Labor Code sections, including, but not limited to: 201, 202, 203, 204, 206, 226(a), 226.7, 246, 510, 512(a), 1174(d), 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5, and any and all other applicable law.

If you have questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very truly yours,

Haig B. Kazandjian Lawyers, APC

A handwritten signature in black ink, appearing to read 'Haig B. Kazandjian', with a long horizontal flourish extending to the right.

Haig B. Kazandjian, Esq.
Cathy Gonzalez, Esq.
Kevin P. Crough, Esq.

EXHIBIT 4



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

November 24, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/295>)

Subject: *Manuel Banuelos Macias v. Fitness International, LLC*

Dear PAGA Administrator:

This office represents Manuel Banuelos Macias in connection with his claims under the California Labor Code. Mr. Banuelos Macias was an employee of FITNESS INTERNATIONAL, LLC ("LA FITNESS").

The employer may be contacted directly at the address below:

FITNESS INTERNATIONAL, LLC
3161 MICHELSON DR. STE. 600
IRVINE CA 92612

Mr. Banuelos Macias intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Banuelos Macias seeks relief on behalf of himself, the State of California, and other persons who are or were employed by LA FITNESS as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

LA FITNESS employed Mr. Banuelos Macias as an hourly paid, non-exempt employee from approximately June 2019 to March 2020. Mr. Banuelos Macias worked for LA FITNESS as a Janitor/Janitorial Personnel at its gym located at 416 S. Atlantic Blvd., Building B, in Monterey Park, California. During his employment, Mr. Banuelos Macias typically worked eight (8) hours or more per day, five (5) days per week, typically from 3:00 p.m. to 12:00 a.m. At the time Mr. Banuelos Macias's employment with LA FITNESS ended, he earned approximately \$14.75 per hour. His job duties included, without limitation, mopping floors; wiping down workout equipment; cleaning locker rooms; and replacing fresh towels, paper towels, soap dispensers, and toilet paper.

LA FITNESS committed one or more of the following Labor Code violations against Mr. Banuelos Macias, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

LA FITNESS’s Company-Wide and Uniform Payroll and HR Practices

FITNESS INTERNATIONAL, LLC is a California limited liability company and a privately owned fitness chain operating over 700 gym locations in the United States (including at least 109 locations in California) and employing nearly 10,000 people nationwide. Upon information and belief, LA FITNESS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Irvine, California, for all non-exempt, hourly paid employees working for LA FITNESS in California, including Mr. Banuelos Macias and other aggrieved employees. At all relevant times, LA FITNESS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Banuelos Macias and other aggrieved employees, regardless of its location or position.

Upon information and belief, LA FITNESS maintains a centralized Payroll department at its corporate headquarters in Irvine, California, which processes payroll for all non-exempt, hourly paid employees working for LA FITNESS in California, including Mr. Banuelos Macias and other aggrieved employees. Further, LA FITNESS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Banuelos Macias and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, LA FITNESS utilized the same methods and formulas when calculating wages due to Mr. Banuelos Macias and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

LA FITNESS willfully failed to pay all overtime wages owed to Mr. Banuelos Macias and other aggrieved employees. During the relevant time period, Mr. Banuelos Macias and other aggrieved

¹ These facts, theories, and claims are based on Mr. Banuelos Macias’s experience and counsel’s review of those records currently available relating to Mr. Banuelos Macias’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Banuelos Macias reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, LA FITNESS had, and continues to have, a company-wide policy of discouraging and impeding Mr. Banuelos Macias and other aggrieved employees from recording hours worked that were outside of their scheduled shifts. Mr. Banuelos Macias and other aggrieved employees were forced to work off-the-clock performing tasks outside of their scheduled shift times, but were not provided a means by LA FITNESS to account for this time. For example, approximately four (4) times per week, Mr. Banuelos Macias arrived to work 10-15 minutes before the beginning of his shift in order to get started on his workload and assist other janitorial employees or supervisors with job duties, but was not permitted to clock in until his scheduled shift start-time. At all times, Mr. Banuelos Macias and other aggrieved employees remained under the control of LA FITNESS. This off-the-clock work could have been recorded by LA FITNESS, but it refused to do so to avoid payment of additional wages to Mr. Banuelos Macias and other aggrieved employees.

Second, on information and belief, LA FITNESS had, and continues to have, a company-wide policy strictly staffing its gym locations based on the labor hours allocated by each location's labor or payroll budget, which has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload. For example, LA FITNESS only scheduled one (1) male janitorial employee and one (1) female janitorial employee per shift, resulting in little or no coverage for Mr. Banuelos Macias and other aggrieved employees to take timely, compliant meal periods. Thus, Mr. Banuelos Macias and other aggrieved employees had their meal periods cut short, interrupted, and/or missed in order to attend to their heavy workload. Moreover, LA FITNESS had a practice of failing to schedule meal periods, which further caused Mr. Banuelos Macias and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this inadequate meal period coverage, Mr. Banuelos Macias and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, Mr. Banuelos Macias and other aggrieved employees performed work during meal periods for which they were not paid.

LA FITNESS knew or should have known that as a result of these company-wide practices and/or policies, Mr. Banuelos Macias and other aggrieved employees were working after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Banuelos Macias and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Banuelos Macias and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, LA FITNESS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, LA FITNESS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, LA FITNESS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, LA FITNESS failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Banuelos Macias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 2 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11020(2)(G) (defining "Hours Worked").

As stated above, LA FITNESS systematically failed to pay Mr. Banuelos Macias and other aggrieved employees for actual hours worked before scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, due to LA FITNESS's uniform practice of utilizing labor budgets, resultant understaffing, failure to schedule meal periods, and a lack of meal period coverage, Mr. Banuelos Macias and/or other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

Thus, LA FITNESS did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, LA FITNESS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, LA FITNESS regularly failed to pay at least minimum wages to Mr. Banuelos Macias and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mr. Banuelos Macias and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than

twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As set forth above, during the relevant time period, LA FITNESS had, and continues to have, a company-wide policy and/or practice of understaffing its gym locations due to labor budgeting, which resulted in a lack of adequate meal period coverage and prevented Mr. Banuelos Macias and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Moreover, LA FITNESS had a practice of failing to schedule meal periods, which further caused Mr. Banuelos Macias and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Banuelos Macias and other aggrieved employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, during his employment, Mr. Banuelos Macias was not scheduled for meal periods, resulting in him taking meal periods late, sometimes after his sixth hour of work, due to a lack of coverage. As a further example, twice per week, Mr. Banuelos Macias would have his meal periods cut short to keep up with his heavy workload.

In addition, during the relevant time period, Mr. Banuelos Macias and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For example, Mr. Banuelos Macias worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Banuelos Macias and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

LA FITNESS knew or should have known that as a result of its policies and practices, that Mr. Banuelos Macias and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. LA FITNESS further knew or should have known that it did not pay Mr. Banuelos Macias and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, LA FITNESS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Banuelos Macias and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that LA FITNESS did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, LA FITNESS did not pay other aggrieved employees at the correct rate of pay for premium wages because LA FITNESS systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, LA FITNESS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Banuelos Macias and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the

employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, LA FITNESS regularly failed to authorize and permit Mr. Banuelos Macias and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, LA FITNESS's company-wide labor budget policies and resultant understaffing, prevented Mr. Banuelos Macias and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. LA FITNESS also failed to schedule rest periods, which, coupled with LA FITNESS's failure to provide adequate rest period coverage, further led to Mr. Banuelos Macias and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, LA FITNESS maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Banuelos Macias and other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, LA FITNESS's company-wide on-premises rest period policy prevented Mr. Banuelos Macias and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result, Mr. Banuelos Macias and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Banuelos Macias worked through his shifts without taking his 10-minute rest periods due to the workload, lack of coverage, and failure to schedule rest periods. Mr. Banuelos Macias would also have his rest periods interrupted by supervisors' requests over the gym loudspeakers to attend to job duties, such as replacing paper towels.

LA FITNESS also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that LA FITNESS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, LA FITNESS did not pay other aggrieved employees at the correct rate of pay for premium wages because LA FITNESS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, LA FITNESS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Banuelos Macias and other aggrieved employees are

entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. LA FITNESS has not provided Mr. Banuelos Macias and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, LA FITNESS has knowingly and intentionally provided Mr. Banuelos Macias and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, LA FITNESS issued uniform wage statements to Mr. Banuelos Macias and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, LA FITNESS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because LA FITNESS did not record the time Mr. Banuelos Macias and other aggrieved employees spent working off-the-clock, LA FITNESS did not list the correct amount of gross wages and net wages earned by Mr. Banuelos Macias and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, LA FITNESS failed to accurately list the total number of hours worked by Mr. Banuelos Macias and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Furthermore, because LA FITNESS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, LA FITNESS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, LA FITNESS also failed to list the correct amount of net wages in violation of section 226(a)(5). LA FITNESS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), LA FITNESS willfully failed to maintain accurate payroll records for Mr. Banuelos Macias and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, LA FITNESS failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Banuelos Macias and other aggrieved employees, in violation of section 1198. Furthermore, in light of LA FITNESS’s failure to provide Mr. Banuelos Macias and other aggrieved employees with second 30-minute meal periods to which they were entitled, LA FITNESS kept no records of meal start and end times for second meal periods.

Because LA FITNESS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Banuelos Macias and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Banuelos Macias and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Banuelos Macias and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are

deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, LA FITNESS failed to pay Mr. Banuelos Macias and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Banuelos Macias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

LA FITNESS willfully failed to pay Mr. Banuelos Macias and other aggrieved employees who are no longer employed by LA FITNESS all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving LA FITNESS's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Banuelos Macias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 2-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, LA FITNESS had a company-wide policy of requiring Mr. Banuelos Macias and other aggrieved employees to utilize their own personal vehicles for work purposes, such as picking up cleaning supplies from other gym locations, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Banuelos Macias drove to LA FITNESS's gyms in Rosemead and Montebello to obtain cleaning materials, such as jugs of soap and boxes of paper towels, as instructed by his supervisors. Although LA FITNESS required Mr. Banuelos Macias and

other aggrieved employees to utilize their own vehicles to travel to and from other LA FITNESS gym locations, LA FITNESS did not reimburse them for all of their travel expenses.

Additionally, LA FITNESS, on a company-wide basis, required Mr. Banuelos Macias and other aggrieved employees to report to work wearing clean uniforms, including uniform black shirts emblazoned with LA FITNESS's logo, on a daily basis, but only provided their employees with two (2) uniform shirts. This forced Mr. Banuelos Macias and other aggrieved employees to clean their uniforms frequently and incur expenses for doing so. Thus, LA FITNESS failed to provide Mr. Banuelos Macias and other aggrieved employees with an adequate number of uniforms in relation to their scheduled shifts and for the tasks they were required to perform, forcing Mr. Banuelos Macias and other aggrieved employees to incur laundry expenses for the upkeep of their uniforms, as the nature of their work resulted in their uniforms becoming sweaty, dirty, and/or exposed to cleaning chemicals. For example, Mr. Banuelos Macias washed his uniform shirts after each shift, incurring additional laundry expenses, in order to meet LA FITNESS's policies and expectations for employee appearance.

LA FITNESS could have provided Mr. Banuelos Macias and other aggrieved employees with the actual tools required for use on the job, including company vehicles and an adequate number of uniforms and/or access to laundering services. Or, LA FITNESS could have reimbursed employees for their mileage, travel, and laundering costs. Instead, LA FITNESS passed these operating costs off onto Mr. Banuelos Macias and other aggrieved employees. At all relevant times, Mr. Banuelos Macias and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, LA FITNESS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Banuelos Macias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." LA FITNESS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Banuelos Macias's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Banuelos Macias seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Banuelos Macias, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against LA FITNESS for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Banuelos Macias seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Banuelos Macias's reasonable attempt to settle his dispute with LA FITNESS prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform LA FITNESS of Mr. Banuelos Macias's aforementioned grievances and the proposed remedies as detailed below, while affording LA FITNESS a reasonable opportunity to satisfy Mr. Banuelos Macias's demands.

Demand is hereby made that LA FITNESS shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

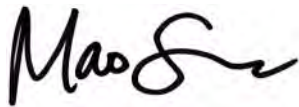
1. LA FITNESS shall pay Mr. Banuelos Macias and all other aggrieved employees employed by LA FITNESS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. LA FITNESS shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. LA FITNESS shall conduct a survey or interview all current and former aggrieved employees in California who worked for LA FITNESS in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for travel, uniform maintenance expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. LA FITNESS shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. LA FITNESS also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. LA FITNESS shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for LA FITNESS's benefit, including, but not limited to, costs of travel, uniform maintenance, or laundering costs, as required by Labor Code section 2802.
6. LA FITNESS shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. LA FITNESS shall provide Mr. Banuelos Macias and all aggrieved employees employed by LA FITNESS at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).

8. LA FITNESS shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
9. LA FITNESS shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 2-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: FITNESS INTERNATIONAL, LLC (via U.S. Certified Mail)

EXHIBIT 5

SUMMARY OF TIME AND COSTS*Ferrer v. Fitness International, LLC*

S.D.S.C. Case No. 37-2020-00044088-CU-OE-CTL

Total Attorneys' Hours: 322.8
Total Lodestar Fees: \$208,620.00
Total Costs: \$21,366.76

As of: May 10, 2023

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
COHELAN KHOURY & SINGER				
Isam C. Khoury, Founding Partner	1974	18.4	\$925	\$ 17,020.00
Michael D. Singer, Managing Partner	1984	7.8	\$900	\$ 7,020.00
Marta Manus, Associate	2008	12.4	\$700	\$ 8,680.00
Kristina De La Rosa (Former Associate)	2011	54.9	\$500	\$ 27,450.00
Amber Worden, Certified Paralegal	N/A	5.9	\$200	\$ 1,180.00
Matthew Atlas, Paralegal	N/A	4.9	\$175	\$ 857.50
TOTAL:		104.3		\$ 62,207.50

FIRM / ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
CAPSTONE LAW APC				
Mark Ozzello, Senior Counsel	1984	29.0	\$950	\$ 27,550.00
Raul Perez, Partner	1994	19.5	\$950	\$ 18,525.00
Mao Shiokura, Senior Counsel	2009	15.9	\$625	\$ 9,937.50
Anthony Castillo, Senior Counsel	2009	12.6	\$625	\$ 7,875.00
Brandon Brouillette (Former Senior Counsel)	2010	16.3	\$600	\$ 9,780.00
Alexander Lima, Associate	2019	25.5	\$475	\$ 12,112.50
Joseph Hakakian, Associate	2018	11.2	\$475	\$ 5,320.00
TOTAL:		130.0		\$ 91,100.00

FIRM	HOURS	HOURLY RATE	TOTAL
HAIG B. KAZANDJIAN LAWYERS, APC			
TOTAL:	88.5	\$625 (Blended)	\$ 55,312.50

Total Aggregate Hours: 322.8	Total Lodestar: \$208,620.00
-------------------------------------	-------------------------------------

SUMMARY OF TIME AND COSTS
Ferrer v. Fitness International, LLC
S.D.S.C. Case No. 37-2020-00044088-CU-OE-CTL

LITIGATION EXPENSES	
COHELAN KHOURY & SINGER	\$ 16,506.59
CAPSTONE LAW APC	\$ 2,713.90
HAIG B. KAZANDJIAN LAWYERS, APC	\$ 2,146.27
TOTAL COSTS	\$ 21,366.76

EXHIBIT 6

COHELAN KHOURY SINGER
Litigation Costs
Ferrer v. Fitness International, LLC
S.D.S.C. Case No. 37-2020-00044088-CU-OE-CTL

<u>Date</u>	<u>Payee</u>	<u>Details</u>	<u>Amount</u>
9/22/2020	LWDA	PAGA Fee Notice	\$75.00
12/3/2020	One Legal	Complaint/Summos/Efile	\$1,492.31
1/25/2021	One Legal	Notice of Acknowledgment of Rec.	\$12.00
6/4/2021	One Legal	Notice	\$12.35
7/2/2021	David A. Rotman	Mediation Fee 8/2/21	\$13,250.00
8/12/2021	LASC	Document	\$5.40
8/18/2021	Berger Consulting	Statistician	\$1,125.00
8/20/2021	One Legal	Stipulation	\$32.94
8/25/2021	One Legal	Notice	\$12.35
10/20/2021	One Legal	Stipulation	\$32.94
10/26/2021	One Legal	Notice	\$12.35
11/29/2021	One Legal	Stipulation	\$32.94
12/3/2021	One Legal	Notice	\$12.35
2/16/2022	One Legal	Stipulation	\$40.15
2/17/2022	One Legal	Stipulation	\$32.94
3/4/2022	One Legal	Notice	\$12.35
4/5/2022	One Legal	Stipulation	\$33.46
6/13/2022	One Legal	Stipulation	\$33.46
8/23/2022	One Legal	Notice of Change in handling Atty	\$12.87
9/29/2022	One Legal	Notice	\$12.87
12/8/2022	One Legal	Stipulation	\$33.46
12/12/2022	One Legal	Notice of Entry of Order	\$12.87
2/2/2023	One Legal	Stipulation	\$33.92
2/17/2023	SDSC	Document	\$1.00
	In House	Postage	\$38.31
	In House	Photocopies (404@.25)	\$101.00
	Total:		\$16,506.59

EXHIBIT 7

LAFFEY MATRIX

[History](#)
[Case Law](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/22- 5/31/23	1.085091	\$225	\$413	\$508	\$733	\$829	\$997
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* $i_{\frac{1}{2}}$ Years Out of Law School $i_{\frac{1}{2}}$ is calculated from June 1 of each year, when most law students graduate. $i_{\frac{1}{2}}1-3$ " includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). $i_{\frac{1}{2}}4-7$ " applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier $i_{\frac{1}{2}}1-3$ " from June 1, 1996 until May 31, 1999, would move into tier $i_{\frac{1}{2}}4-7$ " on June 1, 1999, and tier $i_{\frac{1}{2}}8-10$ " on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT 8